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BRIEF ON MERITS

No. 47

IN THE

Supreme Court of the United States

October Term 1955

SALVATORE FALCONE and JOSEPH FALCONE,
Petitioners,

—*vs.*—

HAROLD E. BARNES, Officer in Charge of Immigration and Naturalization Service,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE PETITIONERS

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Opinion Below

The opinion of the Court of Appeals (R. 40-54) is reported at 219 F. 2d 137.

Jurisdiction

The judgments of the Court of Appeals were entered on January 10, 1954 (R. 54-55). Orders denying petition for rehearing is dated February 8, 1955 (R. 55). Petition for writ of certiorari was filed on April 12, 1955 and was granted on May 16, 1955. The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

Questions Presented

The fundamental questions presented are, viz:

1. Whether the power granted by Section 235 (a) of the Immigration and Nationality Act of 1952 (8 U. S. C. Section 1225) (McCarran-Walter Act), to an immigration officer "*to require by subpoena the attendance and testimony of witnesses before immigration officers and special inquiry officers and the production of books, papers and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this Act* * * *" has application to an investigation, the object of which is to discover evidence for use in an Equity proceeding not yet instituted pursuant to Section 340 of said Act (8 U. S. C. Section 1451), to effect the revocation and cancellation of the naturalization certificates of the Petitioners herein, who are residents of the United States. (Italics supplied).

2. Whether by the exercise of said subpoena power contained in Section 235 (a) of the Act aforesaid, the Petitioners herein can be compelled to give evidence against themselves which could be used against them in a subsequent proceeding instituted, pursuant to provisions

of Section 340 of the Act (8 U. S. C. Section 1451), to effect the revocation and cancellation of their naturalization certificates.

3. Whether the power to issue a subpoena granted by Section 235 (a) of Title II of the Act, entitled "Immigration", Chapter 4 subtitled "Provisions Relating to Entry and Exclusion", can be exercised in an exploratory investigation into matters which would or could ultimately lead to a judicial proceeding to denaturalize a citizen, which proceeding is provided for by Section 340 of Title III of the Act, entitled "Nationality and Naturalization".

4. Whether the word "witness" as used in Section 235 (a) of the Act, without any qualifications whatsoever, can be construed to mean or include a "party" so as to subject such party to the subpoena power set forth in said Section 235 (a) of the Act.

Statutes Involved

Sections 235, 287, 340, 335 (a) and (b) of the Immigration and Nationality Act of 1952; 66 Statute 163, 198-9, (McCarran-Walter Act); 8 U. S. C. Sections 1225, 1357, 1451, 1446; and Code of Federal Regulations, Title 8, Parts 235, 287, 335 and 340. They are printed in Appendix A., B., C., D. respectively herein. (pp. 44 to 83).

Title II entitled "Immigration, Chapter 4 subtitled "Provisions Relating to Entry and Exclusion" under Section 235 entitled "Inspection by Immigration Officers" provides as follows:

> "Sec. 235 (a) The inspection, other than the physical and mental examination, of aliens (including alien crewmen) seeking admission or readmission to,

or the privilege of passing through the United States shall be conducted by immigration officers, except as otherwise provided in regard to special inquiry officers. All aliens arriving at ports of the United States shall be examined by one or more immigration officers at the discretion of the Attorney General and under such regulations as he may prescribe. Immigration officers are hereby authorized and empowered to board and search any vessel, aircraft, railway car, or other conveyance, or vehicle in which they believe aliens are being brought into the United States. The Attorney General and any immigration officer, including special inquiry officers, shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, pass through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and, where such action may be necessary, to make a written record of such evidence. Any person coming into the United States may be required to state under oath the purpose or purposes for which he comes, the length of time he intends to remain in the United States, whether or not he intends to remain in the United States permanently and, if an alien, whether he intends to become a citizen thereof, and such other items of information as will aid the immigration officer in determining whether he is a national of the United States or an alien and, if the latter, whether he belongs to any of the excluded classes enumerated in section 212. The Attorney General and any im-

migration officer, including special inquiry officers, shall have power to require by subpena the attendance and testimony of witnesses before immigration officers and special inquiry officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and to that end may invoke the aid of any court of the United States. Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer or special inquiry officer may, in the event of neglect or refusal to respond to a subpena issued under this subsection or refusal to testify before an immigration officer or special inquiry officer, issue an order requiring such persons to appear before an immigration officer or special inquiry officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof.".

Statement

Petitioners are brothers and emigrated to the United States from Italy on the steamship San Giovanna and entered the Port of New York on December 8, 1967 disembarking at Ellis Island with their father and mother, Antonio and Maria Falcone, also known as Antonio and Maria Projelto, both now deceased. Petitioners and their said parents were lawfully admitted into the United States from Ellis Island (R. 26, 38, Pet. Ex. 6). That Sal-

vatore Falcone was 16 years of age and that Joseph Falcone was 4 years of age at said time (R. 26).

Salvatore Falcone is a duly naturalized citizen of the United States by virtue of a certificate of naturalization bearing No. 212636 and dated July 21, 1925 issued by order of the Supreme Court of the State of New York signed by the Hon. Ernest I. Edgecomb, one of the Justices of the Supreme Court of the State of New York (Oneida County) (R. 26, 38, Pet. Ex. 6).

Joseph Falcone is also a duly naturalized citizen of the United States by virtue of a certificate of naturalization bearing No. 2118748 and dated February 18, 1925 issued by order of the Supreme Court of the State of New York signed by the Hon. Jerome L. Cheney, one of the Justices of the Supreme Court of the State of New York (Oneida County) (R. 26, 38, Pet. Ex. 6).

Salvatore Falcone is presently a resident of the City of Utica, Oneida County, New York, and maintains a business interest with his son in the City of Miami, Dade County, Florida.

That during the summer of 1952, officers of the Immigration Service of Miami, Florida, called at Petitioner's place of business for the purpose of an interview; that they were informed by Petitioner's son that he could be contacted at the home of his son, the attorney herein, at Utica, New York. Said officers at that time asked whether said Salvatore Falcone was an alien or a citizen and upon receiving the reply that he was a citizen, left a message that when he returned to Miami he was to call at the office of the Service and to then bring with him his

naturalization certificate. That in September of that year, Salvatore Falcone complied with said request.

That prior to the issuance of the subpoenas here in question, the Immigration Service by letters addressed to Salvatore Falcone at Miami, Florida and to Joseph Falcone at Utica, New York, respectively, requested each to appear before officers of the Service in their respective cities for the purpose of an interview. That no reason was given therefor except "for an interview in connection with an official matter." (R. 12, 14, 16). Petitioners appeared at the designated time and place. That Salvatore Falcone was asked to explain the reason why his family immigrated to the United States under the name of Projelto and he answered all questions (R. 16); that Joseph Falcone did not answer any questions as the hearing officer, Stanley W. Anderson, refused to divulge the reason for the interview. (R. 8).

That on June 18, 1953, Joseph Falcone was served with a subpoena issued by the Acting Officer in Charge of the Immigration Service of the Syracuse, New York District, to appear before the Immigration and Naturalization Service at the Federal Building in Syracuse, N. Y. on June 23, 1953, pursuant to section 235 (a) of the Immigration and Nationality Act (8 U. S. C. 1225) and to produce at said time his birth certificate, original entry into the United States, naturalization certificate, and further was commanded to make a statement before an officer of the Service (R. 5, 6). Said subpoena was served by Stanley W. Anderson, Investigator (General). No fee or mileage was tendered either before or after the special appearance. That said subpoena did not set forth a proceeding in which he was called upon to testify except "In Re: Joseph

Falcone", and did not set forth the information the Service sought to elicit from him, in addition to the production of the documents therein described, nor the purpose of the same.

That at the appointed time and place, Joseph Falcone appeared specially before Stanley W. Anderson, who also presided as the hearing officer, and respectfully objected to the power of the Acting Officer in Charge to issue said subpoena against him pursuant to section 235 (a) of the Act (8 U. S. C. 1225), on the ground that such power was granted to him only in cases involving aliens and not duly naturalized citizens of the United States. Nevertheless, he voluntarily exhibited his naturalization and birth certificates (R. 4).

That on June 30, 1953, Salvatore Falcone was served with a subpoena to appear before the Service at the Federal Building in Syracuse, New York on July 3, 1953, issued pursuant to section 235 (a) of the Act, by the Officer in Charge of the Immigration Service of the Syracuse District, and to produce his birth and naturalization certificates and original entry, and was further commanded to make a statement before an officer of the Service, without setting forth the nature of the information sought to be elicited from him or in what proceeding such testimony was required except "In re: Salvatore Falcone" (R. 20, 21, Pet. Ex. C.); said subpoena was served by Stanley W. Anderson, Investigator (General), the person who also presided at the hearing and was to act as the interrogator and who was to administer the oath (R. 21-24). That Salvatore Falcone appeared specially and objected to the power of the Service to issue said subpoena; brought into the hearing room his own court stenographer who took

down the proceedings and for the third time voluntarily exhibited his birth and naturalization certificates (R. 22). That no fee or mileage was tendered either before or after the special appearance.

That thereafter, Petitioners were served with orders to show cause returnable at the Federal District Court for the Northern District of New York at Albany, New York, why they should not be held in contempt for refusal to testify pursuant to such subpoenas, and they appeared specially, objected that the subpoenas issued under section 235 (a) of the Act were invalid as against the Petitioners as naturalized American citizens, and subpoenaed into Court the original naturalization records on file in the Oneida County Court House of the Supreme Court of the State of New York which records disclosed the original entry or certificate of arrival (as demanded in the subpoena), together with the Declarations of Intention, Petitions for Naturalization, Oaths, Affidavits, Testimony in Open Court, and the respective Orders signed by Justices of the Supreme Court of the State of New York duly admitting Petitioners to citizenship (R. 25, 37, 38; Pet. Ex. 6).

The Immigration Service contended before the District Court that section 235 (a) of the Act confers upon it power to issue subpoenas against any person, including naturalized citizens, and that such power is implicitly authorized and granted by the provisions of section 287 (b) of the Act (8 U. S. C. 1357 (b)), and that it is also authorized by the Code of Federal Regulations, promulgated by the Attorney General in Title 8, §§ 287.4, 335.11 and 340.11, and that the Service needs said testimony to de-

termine the advisability of instituting actions in Equity against Petitioners for a decree of denaturalization pursuant to section 340 of the Act (8 U. S. C. 1451). (Appdx. A., B., C. and D.):

The District Court rendered its decision in writing dismissing the application of the Service (R. 26-35) stating in substance that a reading of the entire section 235 and the analysis of the Congressional Intent as to section 235, as expressed in House Report No. 1365, U. S. Code Service, 1952, pages 1709-1710, (Appdx. F.) indicate that it was not intended by Congress to confer jurisdiction on the Service to issue subpoenas to naturalized citizens of the United States; also that a naturalized citizen is entitled to have his status determined by a judicial tribunal and have the security of judicial over administrative action; and that to allow the subpoena to stand, the provisions of section 340 of the Act (8 U. S. C. 1451) which prescribes the judicial procedure for revocation would be empty words, and the judicial procedure would be preempted by administative action.

That Appeals were taken from the District Court judgments to the Court of Appeals, Second Circuit. That on January 10, 1955, the said Court of Appeals in an opinion delivered by Circuit Judge Medina, reversed the District Court and construed section 235 (a) of the Act of 1952 by giving it a broadly liberal interpretation to effectuate, as the Court believed, the intent of Congress to extend the investigatory powers of the Service to ferret out communists and subversives (R. 39-54).

The Court below then continued (R. 53):

"This does not mean that the Falcones * * * are

charged with or even suspected of subversion. Nothing in these records now before us indicate that any of these respondents has ever been engaged in or has any knowledge of subversive activities of any kind."

Summary of Argument

A resident naturalized citizen is not amenable to a subpoena issued by an immigration officer empowered to issue subpoenas by Section 235 (a) of the Immigration and Nationality Act of June 27, 1952, to compel him to testify to facts relating to his naturalization. Such provision relates only to proceedings involving entry and exclusion and have no application to a resident citizen.

The Act of 1952 which is a revision and codification of all the immigration and naturalization laws theretofore passed, comprises four titles, and many chapters, sections and subsections. Each Title deals with a separate subject and in its several sections sets forth the procedure to be followed in the enforcement of its substantive law. For example: Title II deals exclusively with "Immigration" and its several Chapters deal with "Aliens", "Entry", "Exclusion" and "Deportation". Title III deals exclusively with "Nationality and Naturalization" and its several Chapters deal with "Nationality, Naturalization and Denaturalization."

Each of said Titles contains provisions granting certain immigration officers the right to interrogate, examine, cross-examine, and to subpoena.

Section 235 (a) of Title II in Chapter 4 dealing with entry and exclusion, grants the "* * * power to administer

oaths and to take and consider evidence of or from *any person touching the privilege of any alien or person he believes or suspects to be an alien* * * ***** and also the "* * * power to require by subpoena the attendance and testimony of *witnesses* * * ***.

Section 236 (a) of Title II in Chapter 4 dealing with entry and exclusion, grants the power to "* * * administer oaths, present and receive evidence, and interrogate, examine, and cross-examine *the alien or witness*."

Section 242 (b) of Title II in Chapter 5 dealing with deportation, grants the power to "* * * administer oaths, present and receive evidence, interrogate, examine, and cross-examine *the alien or witnesses* * * ***.

Section 287 (a) of Title II in Chapter 9, entitled "Miscellaneous", grants the power "* * * to interrogate *any alien or person believed to be an alien* * * ***.

Section 287 (b) grants the power "* * * to administer oaths and to take and consider evidence concerning the privilege of any person * * ***.

Section 335 (b) of Title III in Chapter 2 dealing with "Nationality through Naturalization" grants the power "* * * to take testimony concerning any matter touching or in any way affecting the admissibility of *any petitioner for naturalization*, to administer oaths, including the oath of the petitioner for naturalization and the oaths of *petitioner's witnesses* to the petition for naturalization, and to require by subpena the attendance and testimony of *witnesses, including petitioner* * * ***.

Section 336 (d) of Title III of said Chapter 2 grants the power to the Attorney General "* * * to appear before

any court in any naturalization proceedings for the purpose of cross-examining the *petitioner and the witnesses* * * *". (Italics supplied)

Each title, therefore, is made sufficient unto itself in the field of enforcement.

In addition, and very importantly, Title III dealing with "Nationality and Naturalization" sets forth a judicial procedure to be followed in an Equity suit to bring about the cancellation of a Cerificate of Naturalization.

Such facts unerringly point to the intent of Congress to integrate all of the laws pertaining to immigration, nationality and naturalization into one harmonious whole, each subject matter being dealt with separately and entirely under its own Title, with its own substantive law and procedure for the enforcement thereof. Congress made it clear, therefore, that the enforcement provisions contained under each Title should be confined to the enforcement of proceedings involving the substantive law in said Title. To hold otherwise would be to say that the subpoena powers granted in the other Title of the Act are meaningless, duplicitous, and a wholly unnecessary reiteration. The Court ought not to so construe the Act as to render parts of its meaningless or a mere reiteration, especially when so carefully and methodically arranged in the law. We conclude, therefore, that the subpoena power contained in Section 235 (a) of the Act relates to, and can be used only in, the enforcement of the Title in which it is found, which deals with entry and exclusion. The Petitioners being resident citizens are, in consequence, not amenable to such subpoena power.

Nowhere in the Act does it state or provide that a sub-

poena may issue to a "citizen" in a proceeding affecting his status. His status can only be impeached or challenged in an Equity suit as provided by Section 340 where he is given the protection of the judicial process. The attempt of the Immigration Service to compel the Petitioners to testify to matters relating to naturalization by the service upon them of subpoenas issued under Section 235 (a) is an attempt to subvert the plain provisions of the Act, and to pre-empt the judicial process by administrative action.

The history of the laws on the subject of Immigration and Nationality shows that at no time did Congress grant to the Immigration Service the right to subpoena a "citizen" in a matter involving himself.

The provisions contained in the several Titles granting the Service the power to interrogate, examine, cross-examine, and to subpoena, particularly classify the categories of persons subject to such powers.

This clear distinction made by Congress, and the legislative history of the Act, (House Report No. 1365, U. S. Code Servige, 1952, pp. 1709-10), point up the intent of Congress to exclude a resident citizen from such subpoena power in a matter involving himself.

The further point is urged that the Attorney General himself in Part 287, Section 287.4 of the Code of Federal Regulations promulgated by him to implement the Act, specifically excludes from the power granted therein to immigration officers to issue subpoenas, the right to issue subpoenas in Naturalization matters by the use of the words "Except as provided in § 335.11" of such Regulations. Hence the power to issue subpoenas thereunder is

necessarily limited to Immigration matters, in conformance with the pattern laid down by Congress. This is confirmed by the Attorney General in the Regulations which follow the same pattern. For instance—Part 287, Section 287.4 of the Regulations, implementing Section 287 of the Act, appears in "Subchapter B—Immigration Regulations", whereas, Part 335, Section 335.11 implementing Section 335 (b) of the Act, appears in "Subchapter C—Nationality Regulations". [Appendix A (2), B (2), C (2), D, (2)]

ARGUMENT

I

THE POWER TO SUBPOENA "WITNESSES" GRANTED BY SECTION 235 (a) OF THE IMMIGRATION AND NATIONALITY ACT OF 1952 DOES NOT INCLUDE THE POWER TO SUBPOENA A "PARTY".

The duties of immigration officers in an inquiry relating to an alien seeking to enter the United States was first set forth in Section 8 of the Act of March 3, 1891 (26 Stat. 1084; 8 U. S. C. 101), in the following language:

> "* * * The inspection officers and their assistants shall have power to administer oaths, and to take and consider testimony touching the right of any such aliens to enter the United States, all of which shall be entered of record. * * *"

This power next appears in Section 24 of the Act of March 3, 1903 (32 Stat. 1213; 8 U. S. C.), in the following language:

> "* * * Immigration officers shall have power to administer oaths and to take and consider testimony touching the right of any alien to enter the United States, and, where such action may be necessary, to make a written record of such testimony, and any person to whom such oath has been administered under the provisions of this Act who shall knowingly or willfully give false testimony or swear to any false statement in any way affecting or in relation to the right of any alien to admission to the United States shall be guilty of perjury and shall be punished as

provided by section fifty-three hundred and ninety-two, United States Revised Statutes. * * *"

The above provision was carried over verbatim into Section 24 of the Act of February 20, 1907 (34 Stat. 898; 8 U. S. C.).

Thereafter, such power was broadened by Section 16 of the Act of February 5, 1917 (39 Stat. 874; 8 U. S. C.), which provided in part as follows:

"* * * All aliens coming into the United States shall be required to state under oath the purposes for which they come, the length of time they intend to remain in the United States, whether or not they intend to abide in the United States permanently and become citizens thereof, and such other items of information regarding themselves as will aid the immigration officials in determining whether they belong to any of the excluded classes enumerated in section 3 hereof. Any district director of immigration and naturalization designated by the Commissioner or any inspector in charge *shall also* have power to require by subpoena the attendance and testimony of witnesses before said inspectors and the production of books, papers, and documents touching the right of any alien to enter, reenter, reside in, or pass through the United States, and to that end may invoke the aid of any Court of the United States; and any district court within the jurisdiction of which investigations are being conducted by an immigrant inspector, may, in the event of neglect or refusal to respond to a subpoena issued by any such district director, or inspector in charge or refusal to testify before such immigrant inspector, issue an order requiring *such*

person to appear before said immigrant inspector, produce books, papers, and documents, if demanded, and testify; and any failure to obey such order of the Court may be punished by the Court as a contempt thereof. * * *" (Italics supplied).

The Act of June 27, 1952 continues and expands such power in Section 235 (a) thereof in the following language:

> court may be punished by the court as a contempt * * * Any person coming into the United States may be required to state under oath the purpose or purposes for which he comes, the length of time he intends to remain in the United States, whether or not he intends to remain in the United States permanently and, if an alien, whether he intends to become a citizen thereof, and such other items of information as will aid the immigration officer in determining whether he is a national of the United States or an alien and, if the latter, whether he belongs to any of the excluded classes enumerated in section 212. The Attorney General and any immigration officer, including special inquiry officers, shall have power to require by subpena the attendance and testimony of witnesses before immigration officers and special inquiry officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States *or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service*, and to that end may invoke the aid of any Court of the United States. * * *" (Italics supplied).

A careful review of the various Acts of Congress set forth above relating particularly to examination by the Immigration Service shows that at first the subpoena power was not granted to the Immigration Service; that the power of the Service was limited to the administering of oaths and taking and considering testimony touching the right of aliens to enter the United States. Since no subpoena power was granted in the original enactment, it is obvious that the testimony which the Service was therein empowered to take and consider in addition to that of the alien, of necessity referred to testimony of witnesses who voluntarily offered such testimony.

By the Act of 1917, Congress in re-enacting in effect the provision of the Acts of 1891 and 1903 relating to the power to administer oaths, and to take and consider testimony, and expanding the power of the Immigration Service by granting certain members thereof the power to require by subpoena the attendance and testimony of witnesses, must have intended such power to subpoena to be exercised only in the case of "witnesses" as distinguished from the "alien" himself and the language employed and the history of the provision clearly evinces such intention. The alien seeking to enter the United States was then, as under the previous Acts and now is under the present Act, subject to examination by the Service before he was permitted to enter the country. He was compelled by his very desire to enter the country to submit to questioning under oath. No subpoena, therefore, was necessary to compel his appearance or testimony and if he failed to give testimony required of him, he would be denied admittance. Hence, no subpoena power as to the alien was needed or required. Such was not the case as to

"witnesses". The subpoena power granted by the Act of 1917, therefore, granted a power to the Immigration Service it did not formerly possess, and by its language, was intended to apply only to "witnesses" other than the alien. The power thus conferred *was in addition* to the power already possessed by the Service, as evidenced by the use of the words "shall *also* have power.".

When the said subpoena power was re-enacted and expanded by Section 23[illegible](a) of the Act of 1952, the language employed is significant. The Attorney General and certain officers of the Immigration Service "shall have power to require by subpoena"

1. "the attendance and testimony of witnesses";
2. "the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States"; and
3. "or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service".

Such statement poses two questions:

1. To what category of persons did the Congress intend the subpoena power to apply?

2. To what subject matter did Congress intend the inquiry to be directed?

The Service argues that the grant of the above power enables it to subpoena the attendance of a resident naturalized citizen to give testimony under oath with regard to a matter involving his naturalization. If the Service is right in its contention, then it must follow that:

First: That the Petitioners are "witnesses" within the purview of Section 235 (a); and.

Second: That such subpoena power relates to naturalization as well as immigration.

We cannot accept as correct the construction contended for by the Service, nor the correctness of the assumptions which flow therefrom.

We have already seen the word "witnesses" as used in the Act of 1917 applied only to persons other than the alien. There is nothing in the Act of 1952 to suggest that the subpoena power therein contained was expanded to include the *subject* of an inquiry either under the immigration provisions of said Act or the naturalization provisions thereof. The language used in Section 235 (a) aforesaid is exactly the same as contained in Section 16 of the Act of 1917 except as to the nomenclature of the officers empowered to act. The additional power granted in said Section 235 (a) by the words "or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service" therefore, can only be construed to refer to the *subject matter* of the inquiry. The plain intent of Congress seems to have been to carry into the Act of 1952 the same subpoena power granted to the Service in the Act of 1917 and to extend the *scope* of the inquiry; but Congress did not intend by the use of such language to extend the jurisdiction of such subpoena to cover the *subject* of the inquiry. And it can hardly be assumed that the Congress, in codifying for the first time the entire body of law relating to immigration and naturalization with its multitudinous chapters, titles, and sections, intended to grant to the Im-

migration Service a power relating to naturalization proceeding which it did not theretofore possess, by means of a correlative clause contained in a section of the law relating to immigration and titled "Inspection by Immigration Officers":

"It will be noted that where Congress intended and did, in fact, grant to the Attorney General and to the Immigration and Naturalization Service the right to subpoena and the right to interrogate and to examine, it made the distinction between the alien, the petitioner or applicant for naturalization, and the witnesses, by including each of them by name in the several sections granting such power to interrogate or to examine.

This distinction is pointed out and emphasized by Circuit Judge Hastie in writing for the Court of Appeals for the Third Circuit, in the case of Abraham Minker (217 F. 2d 350, 351, 352) to be argued contemporaneously with the instant case, in the following language:

> "In 1952 Congress repeated the entire body of our statutory immigration and nationality laws. Immigration and Nationality Act of 1952, 66 Stat. 163; 8 U. S. C., 1952 ed., ch. 12. The provision we now are construing is new language in the 1952 Act. The section in which it appears is only one of several scattered throughout the Act in which some provision is made concerning witnesses. Therefore, it is significant that in several such sections where Congress wished to make a provision as to witnesses applicable to parties in interest, it said so. In prescribing naturalization procedure, Congress granted the subpoena in these terms:
>
> "'The Attorney General shall designate one

ployees of the Service to conduct preliminary examinations upon petitions for naturalization . . . for such purposes any such employee . . . is authorized . . . to require by subpoena the attendance and testimony of witnesses, including petitioner, . . .' 8 U. S. C., 1952 ed., § 335 (b).

"Similar precision appears in the regulation of deportation procedure:

"'A special inquiry officer shall conduct proceedings under this section to determine the deportability of any alien, and shall administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien or witnesses . . .' 8 U. S. C., 1952 ed., § 242 (b).

"Almost identical language appears in connection with the exclusion of aliens:

"'A special inquiry officer shall conduct proceedings under this section, administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien or witnesses.' 8 U. S. C., 1952 ed., § 236 (a).

"Again, it is provided:

"'The Attorney General shall have the right to appear before any court in any naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of the petition concerning any matter touching or in any way affecting the petitioner's right to admission to citizenship, and shall have the right to call witnesses, including the petitioner, . . .' 8 U. S. C., 1952 ed., § 336 (d).

"In these circumstances the failure to make any equivalent amplification of the witness category in

Section 235 (a) is some indication that none was intended."

The conclusion of the Court of Appeals in the *Minker* case in its decision as aforesaid, is borne out by the remarks contained in House Report No. 1365, U. S. Code, Vol. 2, 82nd Congress, 2nd Session, 1952, pages 1710, in the "Analysis of the Bill", wherein it states as follows:

"* * * Immigration officers are also granted the power to subpoena the attendance and testimony of witnesses, and the production of books, papers, and documents in aid of the enforcement of the provisions of the bill. An alien who does not appear, to the examining immigration officers, to be admissible clearly and beyond a reasonable doubt, shall be detained for further inquiry by a special inquiry officer." (Appx. E, p. 84).

II

THE POWER TO SUBPOENA, GRANTED BY SECTION 235 (a) OF THE IMMIGRATION AND NATIONALITY ACT OF JUNE 27, 1952, HAS NO APPLICATION TO INVESTIGATIONS MADE FOR THE PURPOSE OF ESTABLISHING A BASIS FOR DENATURALIZATION SUITS.

The record on appeal discloses that the information sought to be elicited from the Petitioners by means of the subpoena and show cause order in re: Joseph Falcone (subpoena R. 5) (order R. 2), affidavit of Harold E. Barnes (R. 3), and in re: Salvatore Falcone (subpoena R. 20), was information relating to their respective

naturalization certificates, and it appears from the memorandum-decision of Judge Foley of the District Court, the Government frankly stated that the legality of the naturalization of the Falcones is being investigated (R. 29).

The Act of 1952 sets out in Title III thereof, a complete and precise procedure for naturalization of aliens, including investigation and examination, under oath, by the Service of the applicant for citizenship and witnesses as provided by the subpoena power granted in Section 335 (b), and by the Court as provided in Section 336 thereof. Section 340 of said Title III sets forth a complete and precise procedure for the denaturalization of a naturalized citizen on the grounds therein specified by means of a suit in Equity.

The District Court places its decision mainly on the ground that "If the subpoenas here were allowed to stand, the judicial procedure for the revocation of naturalization certificates would be pre-empted by administrative action, and the provisions for personal notice, sixty-day time period to answer in section 340 (b) of the Act would be empty words." (R. 34).

We believe and urge that the decision of the District Court was correct in so holding but that such decision is supported on other grounds:

First: That the power granted the Immigration Service applies only to matters involving *persons* seeking to enter the United States.

Second: That the grant of the certificates of naturalization is a judicial act which, when exercised, judicially establishes that the recipient thereof entered the United

States legally and has duly qualified for citizenship, and such person is not thereafter subject to the administrative process, except as a witness in a proceeding touching another person.

The investigatory power contained in Section 235 (a) includes "* * * power to administer oaths and to take and consider evidence of and from any *person* touching the privilege of any *alien* or *person he believes or suspects to be an alien* to enter, reenter, pass through or reside in the United States. * * *" And also "Any *person* coming into the United States may be required to state under oath the purpose or purposes for which he comes, the length of time he intends to remain in the United States, whether or not he intends to remain in the United States permanently and, if an *alien*, whether he intends to become a citizen thereof, and such other items of information as will aid the immigration officer in determining whether he is a *national* of the United States or an *alien* and, if the latter, whether he belongs to any of the excluded classes enumerated in section 212. * * *"; then follows the subpoena power to examine witnesses etc. "relating to the privilege of any *person* to enter, reenter, pass through, or reside in the United States, or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service." (Italics supplied).

An analysis of the authority thus granted to the immigration officers inexorably leads us to the conclusion that it was the intention of Congress to arm the Immigration Service with power to screen all *persons* seeking to enter the United States for the purpose of determining who, among them, are *aliens* and who are *nationals*. All such

persons may be required to answer certain questions; if the examination discloses the person to be a *national*, no further provision is made as to his examination; if the examination discloses that the person is an *alien*, then such examination may be continued to determine whether he belongs to any of the excluded classes. To implement such authority, the Attorney General and any immigration officer, including special inquiry officers, is granted the power to subpoena the attendance of witnesses, for the purpose of determining the eligibility of any person to enter the United States.

The power thus granted relates solely to matters of immigration. The use of the words "relating to the privilege of any person to enter, re-enter, reside in, or pass through the United States", can only refer to an "*alien*" since only an alien is granted the privilege to enter, re-enter, reside in or pass through the United States—whereas a *citizen* has a *right* to do so.

There is no express grant of authority to examine a citizen of the United States, whether natural born or naturalized, to be found in Section 235 (a) or in any other section of the Act of 1952, except the power to subpoena and examine him as a witness in a hearing involving the status of another person.

The Government's contention that the substitution of the word "person" in the 1952 Act, in place of the word "alien" used in Section 16 of the Act of 1917, grants such authority is not borne out by the careful reading of the entire section or by the intent of Congress as appears in House Report No. 1365, (U. S. Code, Congressional and Administrative News, Vol. 2, 82nd Congress, Second

Session, 1952, pages 1683 to 1750 "Analysis of the Bill" (Appendix E)).

Senator McCarran, one of the authors of the Act, gives substance to this argument when in the debate in Congress on the President's veto message of the said McCarran-Walter Bill, Senator McCarran remarked:

> "The President states that all our citizens returning from abroad would be subjected to serious risk of unreasonable invasions of privacy; but he does not explain how this would come about under the provisions of the bill. I say to you, Mr. President, that there is nothing in the bill which is before us which would permit unreasonable invasions of privacy of citizens, as alleged by the President.
>
> "The President alleges that the bill contains provisions which would result in empowering minor immigration and consular officials to act as prosecutor, judge, and jury in determining whether acts constituting a crime have been committed. Nowhere in the bill, Mr. President, is there such a provision which would permit such action in the administration of the immigration laws."

It would appear from such language that the President of the United States in reviewing the provisions of the Act concluded that the citizens affected by these provisions were *citizens returning from abroad* (a matter involving immigration) and not citizens residing in the United States: (Congressional Record—Senate, 82nd Congress, 2nd Session, Vol. 98, Part 6, Page 8254).

III

ASSUMING THAT THE IMMIGRATION SERVICE HAD THE POWER UNDER SECTION 235 (a) TO ISSUE A SUBPOENA TO THE PETITIONERS HEREIN, THEN ITS RIGHT TO EXAMINE PURSUANT THERETO CEASED UPON THE SUBMISSION OF EVIDENCE BY THE PETITIONERS THAT THEY WERE DULY NATURALIZED AMERICAN CITIZENS.

The intent of Congress in its revision and codification of the laws relating to immigration, naturalization and nationality is made abundantly clear by House Report No. 1365, dated February 14, 1952; reported in U. S. Code, Congressional and Administrative News, Vol. 2, 82nd Congress, Second Session, 1952, at pages 1653 to 1750, where in the "Analysis of the Bill" it states under Title I—General:

> "3. Powers and Duties of the Attorney General and the Secretary of State"
>
> "Section 105 is intended to strengthen security of screening of aliens coming to the United States, or residing therein, by providing for a continuous flow of information between agencies of the Government charged with the administration of immigration and naturalization laws, and those agencies whose duty it is to gather intelligence information having a bearing on the security of the United States." (Appendix E.)

and under Title II—Immigration—numbered and titled "4. Entry, Exclusion, and Deportation of Aliens (Ch. 4 and Sec. 287)" in the analysis of the provisions of Section 235 (a), the report continues:

> * * * It is not intended by this provision to sanction the indiscriminate questioning or harassment *of citizens returning to the United States*, but it is to be used by the immigration officers whenever there is reason to believe that a citizen *is violating* or *about to violate* the law and is about to become expatriated. * * * (Italics supplied) (Appendix E, p. 84).

It would appear from the foregoing language that the purpose of Congress in substituting in the Act of 1952 the word "person" in place of the word "alien", which was used in the Act of 1917, was to afford the immigration officers the right to examine an incoming person to determine whether he is a national of the United States or an alien, and if the former, to empower the Service to examine him to determine whether he is violating or about to violate the law and is about to become expatriated, and if the latter, to determine whether he is subject to exclusion.

The record herein discloses that the **Petitioners are first: not aliens; second: not citizens returning to the United States; third: not citizens violating or about to violate the law; and fourth: not subversives. The record shows that the Petitioners have resided in the United States for upwards of 47 years and have been citizens for upwards of 30 years.**

There is nothing expressed in the analysis above referred to to suggest that it was the intention of Congress to grant the Service the power to indiscriminately or otherwise examine a citizen while actually residing in the United States in a matter involving himself. And if it be

thought that the Service, by such Act has the power to inquire whether the Petitioners are aliens or citizens, then such power was completely satisfied when the Petitioners produced before the immigration officer their birth certificates and naturalization certificates (R. 4 (7), 9, 24, 25, 26; Pet. Ex. 38, 39 (6)). Any further examination was precluded by the proof of their citizenship.

As Justice Brandeis stated writing for the Court in *Bilokumsky* v. *Tod*, 263 U. S. 149, 152, 153,:

> "If, in the deportation proceedings, Bilokumsky had claimed that he was a citizen and had supported the claim by substantial evidence, he would have been entitled to have his status finally determined by a judicial, as distinguished from an executive, tribunal. Ng Fung Ho v. White, 259 U. S. 276, 281."

If the grant of authority to the Immigration Service in Section 235 (a) to subpoena witnesses to testify "concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service" is to be taken out of context and is construed to the extent contended for by the Service; then there is absolutely no limitation on the investigatory power of the Service, despite the distinction made in the Act between "aliens" and "witnesses", and despite the failure of Congress to designate citizens, whether naturalized or not, as being subject to the authority therein granted. This result was certainly not intended by Congress if its intent, as expressed in the foregoing report was correctly expressed. And further, had Congress intended to grant an all-inclusive and all-embracing investigatory power applicable to the entire Act, there would have been no need for the Congress to have provided such power

separately in the other sections of the Act, particularly in Sections 335 (b) and 336 (d) of the Naturalization portion thereof; Sections 242 (b) and 287 (b) of the Deportation portion thereof; and Section 236 (a) of the Exclusion portion thereof.

IV

HUMAN RIGHTS ARE SUBJECT TO AND PROTECTED BY THE JUDICIAL PROCESS GUARANTEED BY THE BILL OF RIGHTS AND THE CONSTITUTION AS OPPOSED TO THE ADMINISTRATIVE PROCESS.

While Congress has the undoubted power and has, in a great many instances, granted investigative and accusatory power with respect to the operations of corporations engaged in Interstate Commerce to administrative agencies, created to police such corporations, it does not follow that such powers may be granted to the Immigration Service in its quest for information as to the private rights of an individual citizen.

When, therefore, the Circuit Court of Appeals in the instant case, in its opinion quoted the statement of this Court in "United States v. Morton Salt Co." (338 U. S. 632, 642-3) (1950), to wit:

> "The only power that is involved here is the power to get information from those who best can give it and who are most interested in not doing so. Because judicial power is reluctant if not unable to summon evidence until it is shown to be relevant to issues in litigation, it does not follow that an administrative

agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry. It has a power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not. When investigative and accusatory duties are delegated by statute to an administrative body, it, too, may take steps to inform itself as to whether there is probable violation of the law."

the Circuit Court of Appeals by such language recognized the right of the Federal Trade Commission to exact information from an industrial corporation doing business in Interstate Commerce relating to the operation of its business. Such language has no application whatsoever to a matter affecting the lives of these Petitioners and others similarly situated. It is interesting to note the further language used in said decision wherein it states as follows at pages 651-652:

"* * * Although the 'right to be let alone—the most comprehensive of rights and the right most valued by civilized men,' Brandeis, J., dissenting in Olmstead v. United States, 277 U. S. 438-471, at page 478, 48 S. Ct. 564, 570, 572, 72 L. Ed. 944, 94 A. L. R. 376, is not confined literally to searches and seizures as such, but extends as well to the orderly taking under compulsion of process, Boyd v. U. S., 116 U. S. 616, 6 S. Ct. 524, 29 L. Ed. 746; Hale v. Henkel, 201 U. S. 43, 70, 26 S. Ct. 370, 377, 50 L. Ed. 652, *neither incorporated associations nor unincorporated associa-*

lic can plead an unqualified right to conduct their affairs in secret. Hale v. Henkel, supra, United States v. White, 322 U. S. 694, 64 S. Ct. 1248, 88 L. Ed. 1542, 152 A. L. R. 1202.

"While they may and should have protection from unlawful demands made in the name of public investigation; cf. Federal Trade Comm. v. American Tobacco Co., 264 U. S. 298, 44 S. Ct. 336, 68 L. Ed. 696, 32 A. L. R. 786, *corporations can claim no equality with individuals in the enjoyment of a right of privacy.* Cf. United States v. White, supra. They are endowed with public attributes. They have a collective impact upon society, from which they derive the privilege of acting as artificial entities. The Federal Government allows them the privilege of engaging in interstate commerce. Favors from government often carry with them an enhanced measure of regulation. * * *." (Italics supplied)

The Government has contended in its brief (p. 22) in the Court below that "nothing more is sought by this order than that the naturalized subject fulfill the obligation imposed upon every petitioner for naturalization. If he has concealed nothing from the court, he will not be prejudiced by the interrogation. And if he has perpetrated a fraud upon the naturalization court, he is not deserving of citizenship and he should not be granted immunity from interrogation as to prevent disclosure of the fraud."

This is plausible language indeed, but it completely ignores the historic struggles of peoples to achieve a measure of protection from the prying power of the State, and assumes as immaterial the hard-won safeguards that the people, through their Constitution, have thrown about

the person to shield him from the effects of such plausible language—such as the right to refuse to talk when charged with a crime, or the right to be safe in one's person against unreasonable search and seizure. In either of such cases, experience taught the founding fathers that such political philosophy did not afford protection even to the innocent and, hence, placed a restraining hand upon the sovereign power. The life and liberty of man is not to be entrusted to the unrestrained judgment of his fellow man but shall be judged by the law. History has confirmed the wisdom of the Bill of Rights. Moreover, when Petitioners, by a judicial act: a judgment of the Supreme Court of the State of New York, became citizens of the United States, they had reached the point in status beyond the status of an applicant or *petitioner* for naturalization. Section 235 (a) grants the subpoena power to examine witnesses touching the *privilege* of any person to enter, reenter, pass through, or reside in the United States. The *alien* is accorded the *privilege* to enter or to reside in the United States, but the certificate of naturalization won by the Petitioners herein after an exhaustive investigation by the Immigration and Naturalization Service, prior to the filing of their petition, and examination by the Court, invested them with the *right* to reside in the United States, and such *right* continues in full force while their certificates of naturalization remain unimpeached. Such Certificates, resulting from the exercise of the judicial process, should not be annulled by administrative action where a judicial proceeding is set up to accomplish such purpose, and especially where, as the Government contends, a pre-trial examination in such suit can accomplish the very purpose it now seeks to accomplish.

V

THE DECISION OF THE COURT BELOW IS WRONG AND SHOULD BE REVERSED AND THE DECISION OF THE DISTRICT COURT AFFIRMED.

We seriously disagree with the reasoning adopted by Circuit Judge Medina writing the opinion of the Court below wherein he states: (R. 50)

> "In view of the broad general language of Section 235 (a) it does not seem to us surprising that no reference is made in Section 340 to the administrative investigatory powers which the Service now seeks to exercise. Nor do we find anything improperly included in or omitted from the Regulations, now so clearly integrated with the various sections of the Act. There is no point in merely repeating in the Regulations something already apparent on the face of the statute. * * *"

The answer is that, despite Section 235 (a), Congress did grant to the Service investigatory powers in Sections 236 (a), 242 (b), 287, 335 (b), and 336 (d). If the investigatory power granted by Section 235 (a) was intended by Congress to be broad enough to cover proceedings under Section 340, why was it not broad enough to cover the proceedings set forth in Sections 236 (a), 242 (b), 287, 335 (b), and 336 (d) so as to make unnecessary this repetition? It is our view, as expressed by Federal District Court Judge Weinfeld, in re Oddo, U. S. D. C., S. D. of N. Y., 147 F. Supp. 323, reversed by the same decision of the Court of Appeals rendered herein, that "* * * if the subpoena power in Title II, Sec. 235 (a), were intended to

extend to and to apply to all sections of the Act, as the government contends, then Sec. 335 (b) of Title III is duplicitous and serves no function. The Act is not to be construed so as to make a provision meaningless."

Further, if there is no point in merely repeating in the Regulations promulgated by the Attorney General something already apparent on the face of the Act, why were so many provisions, in fact, so repeated? The answer is that the omission of the Attorney General to include in the Regulations, the power now asserted by the government, was a conscious one and that he had construed Section 235 (a) as not granting to the Service the right to subpoena citizens: (See Section 235.51 of the Code of Federal Regulations (Appendix A.—(2.)), since the Department of Justice made an exhaustive study of the Act prior to its passage and submitted a 522-page report thereon (U. S. Code, Congressional and Administrative News, Vol. 2, 82nd Congress, Second Session, 1952, Page 1678).

Circuit Judge Medina further states: (R. 48)

> "* * * It seems to be thought that the nature of adversary proceedings of a judicial nature is such that the rights of the United States as petitioner in a denaturalization proceeding, as to discovery and other procedural matters, should be on a parity with those of the respondent therein, despite the special interest of the government in matters relating to immigration and naturalization; and the undoubted power of the Congress to make provision for investigations by government officials preliminary to the commencement of action in court. * * *"

We contend that as a petitioner in a denaturalization action, the United States, despite the special interest alluded to by Circuit Judge Medina, stands in no more advantageous position, vis-à-vis a citizen, than any other litigant in a civil proceeding. *If such were not the case, our system of government would be a government of men rather than one of laws, and the rights guaranteed a citizen would, indeed, be empty words.* The Courts have stated time and time again that the burden of proof in such an action is on the government and that a Certificate of Naturalization cannot be annulled except upon "clear, unequivocal, and convincing evidence." (U. S. vs. Sharrock, 276 Fed. 30; Chenzer vs. U. S., 150 Fed. 2d 535; U. S. v. Knauer, 149 Fed. 2d 519; Jogwick vs. U. S., 142 Fed. 2d 298; Baumgartner vs. U. S., 322 U. S. 655).

We do not doubt the undoubted power of the Congress to grant power to its officials to make preliminary investigations prior to the commencement of actions in Court. We do doubt Congress granted such power by the provision in question here.

Circuit Judge Medina is also of the view that: (R. 49)

> "* * * the subject matter of immigration and naturalization are sui generis; and the exercise of these administrative and judicial investigatory powers side by side and pari passu is, it seems to us, clearly envisioned by the pattern of the statute."

Sui Generis is defined in Black's Law Dictionary, Third Edition, as "of its own kind or class; i.e. the only one of its own kind; peculiar."

The only relationship between the two categories which we are able to discern is one of juxtaposition. In our

view, there is no similarity, let alone kinship, between the subject matter of immigration and the subject matter of naturalization. The fact that one going through naturalization proceedings must, perforce, have first gone through immigration proceedings, does not place both of such proceedings in the same class, in our view. One is as distinct from the other as night is from day, although as in such case, one follows the other seriatem.

Senator Lehman in the Debate on the Act prior to its passage, (Congressional Record, Vol. 98, Part 4, Page 5114), stated that there are 8 million naturalized citizens in the United States. Are we to say that the Attorney General and the Immigration Service are granted the unrestricted and unfettered right, under Section 235 (a) to roam the land and, in their own discretion; to issue subpoenas against each of these 8 million citizens, out of thin air, without even first being obliged to make a showing of probable cause, in order to double check the right of such citizens to a status which many of them have treasured for a good many years?

If, as Circuit Judge Medina thinks, the strengthened provisions of the Act were adopted by Congress because it "* * * was particularly sensitive to the need for prompt and effective dealing with subversives. * * *" (R. 52), the purpose of such action is not served in the instant case since it is conceded by Circuit Judge Medina that "* * *. Nothing in these records now before us indicates that any of the respondents has ever been engaged in or had any knowledge of subversive activities of any kind. * * *" (R. 53).

We share with Circuit Judge Medina and the Circuit

Court of Appeals their solicitude for the welfare of our Country, and their view that a liberal interpretation should be given to the laws passed by Congress to protect the welfare of the nation. However, we believe too, that when such laws affect or impinge upon the privacy and the rights and immunities of citizens under the Constitution, that in such cases, such laws ought to be carefully scrutinized and strictly construed.

Circuit Judge Hastie in writing the opinion for the Circuit Court of Appeals in the Abraham Minker case observed that the penalty in denaturalization cases may be deportation which is a far more drastic punishment than is sometimes meted out in criminal cases. He concludes that the Act in question has a "punitive impact", and, therefore, like the criminal statutes should be strictly construed. To do otherwise would place the fate of 8 million American citizens within the sole discretion of the many immigration officers and special inquiry officers who in addition to the Attorney General are authorized to issue subpoenas under Section 235 (a). We cannot believe that Congress intended any such dire result.

CONCLUSION

FOR THE REASONS STATED IT IS RESPECTFULLY SUBMITTED THAT THE JUDGMENTS OF THE COURT BELOW SHOULD BE REVERSED.

ANTHONY S. FALCONE
Counsel for Petitioners

Dated: August 17, 1955.

APPENDIX A.—(1).

Title II.—Immigration, Chapter 4.—Provision Relating to Entry and Exclusion

INSPECTION BY IMMIGRATION OFFICERS.

"Sec. 235. (a) The inspection, other than the physical and mental examination, of aliens (including alien crewmen) seeking admission or readmission to, or the privilege of passing through the United States shall be conducted by immigration officers, except as otherwise provided in regard to special inquiry officers. All aliens arriving at ports of the United States shall be examined by one or more immigration officers at the discretion of the Attorney General and under such regulations as he may prescribe. Immigration officers are hereby authorized and empowered to board and search any vessel, aircraft, railway car, or other conveyance, or vehicle in which they believe aliens are being brought into the United States. The Attorney General and any immigration officer, including special inquiry officers, shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, pass through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and, where such action may be necessary, to make a written record of such evidence. Any person coming into the United States may be required to state under oath the purpose or purposes for which he comes, the length of time he intends to remain in the United States, whether or not he intends to remain in the United States permanently and, if an

alien, whether he intends to become a citizen thereof, and such other items of information as will aid the immigration officer in determining whether he is a national of the United States, or an alien and, if the latter, whether he belongs to any of the excluded classes enumerated in section 212. The Attorney General and any immigration officer, including special inquiry officers, shall have power to require by subpena the attendance and testimony of witnesses before immigration officers and special inquiry officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and to that end may invoke the aid of any court of the United States. Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer or special inquiry officer may, in the event of neglect or refusal to respond to a subpena issued under this subsection or refusal to testify before an immigration officer or special inquiry officer, issue an order requiring such persons to appear before an immigration officer or special inquiry officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(b) Every alien (other than an alien crewman), and except as otherwise provided in subsection (e) of this section and in section 273 (d), who may not appear to the examining immigration officer at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for further inquiry to be conducted by a special in-

quiry officer. The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to land is so challenged, before a special inquiry officer for further inquiry.

"(c) Any alien (including an alien crewman) who may appear to the examining immigration officer or to the special inquiry officer during the examination before either of such officers to be excludable under paragraph (27), (28), or (29) of section 212 (a) shall be temporarily excluded, and no further inquiry by a special inquiry officer shall be conducted until after the case is reported to the Attorney General together with any such written statement and accompanying information, if any, as the alien or his representative may desire to submit in connection therewith and such an inquiry or further inquiry is directed by the Attorney General. If the Attorney General is satisfied that the alien is excludable under any of such paragraphs on the basis of information of a confidential nature, the disclosure of which the Attorney General, in the exercise of his discretion, and after consultation with the appropriate security agencies of the Government, concludes would be prejudicial to the public interest, safety, or security, he may in his discretion order such alien to be excluded and deported without any inquiry or further inquiry by a special inquiry officer. Nothing in this subsection shall be regarded as requiring an inquiry before a special inquiry officer in the case of an alien crewman.

APPENDIX A.—(2)

8 CFR Part 235—Inspection of Aliens Applying For Admission

Source: §§ 235.1 to 235.51 appear at 17 F. R. 11906, Dec. 19, 1952.

SUBPART A—SUBSTANTIVE PROVISIONS

§ 235.1 *General qualifications and requirements for the admission of aliens.* The following general qualifications and requirements shall be met by an alien seeking to enter the United States regardless of whether he seeks to enter for permanent, indefinite, or temporary stay, and regardless of the purpose for which he seeks to enter:

(a) The alien shall apply in person at a place designated as a port of entry for aliens.

(b) The alien shall apply for admission at a time when the immigration office at the port is open for the inspection of applicants for admission.

(c) The alien shall make his application in person to an immigration officer.

(d) The alien shall present whatever documents are required.

(e) The alien shall establish to the satisfaction of the immigration officer that he is not subject to exclusion under the immigration laws, Executive orders, or Presidential proclamations and that he is entitled under all of the applicable provisions of the immigration laws and this chapter to enter the United States.

235.2 *Examination postponed*—(a) *Alien and members of family.* Whenever an alien upon arrival, or pending the determination of his right to admission to the United States, is found or believed to be suffering from a disability which in the opinion of the examining immigration officer or special inquiry officer renders it impracticable to proceed with the examination under the Immigration and Nationality Act, the facts shall be reported to the district director, or officer in charge having administrative jurisdiction over the port of arrival who shall determine whether the examination should proceed or be postponed. If the examination is postponed and the testimony of such alien is required to determine the admissibility of members of his family, the determination of such cases may be postponed in the discretion of such district director or officer in charge, until the examination of such alien becomes practicable. If such alien's testimony is not so required, and if the alien's admission is in no manner necessary to the financial support of the remaining family members and he appears to be eligible for admission provided he recovers from the disability or no disability is found to exist, the family members may be examined forthwith and, if found eligible for admission to the United States, admitted:

(1) Upon the deposit of a sum of money (or transportation ticket and money) sufficient to defray the expenses of conveying the alien whose case is postponed to his final destination; and

(2) Upon the deposit of a further sum of money (or transportation ticket and money) sufficient to cover the cost of the service and transportation of a proper attendant from the port of arrival to the point of destination or

deportation and return, if it appears to the officer in charge that such attendant is or may be necessary for the proper care and attention of the alien.

(b) *Accompanying alien.* If it appears to the examining immigration officer that an alien not found to be admissible is likely to be certified by the examining medical officer as helpless from sickness or mental or physical disability or infancy, pursuant to section 237 (c) of the Immigration and Nationality Act, the examination of any accompanying alien, whose protection or guardianship will be required by the alien not found admissible, shall be postponed pending decision of the case of the alien likely to be excluded.

§ 235.3 *Detention of aliens.* All aliens (including aliens crewmen) arriving at a port in the United States by vessel or aircraft shall be detained aboard the vessel or at the airport of arrival by the master, commanding officer, purser, person in charge, agent, owner, or consignee of such vessel or aircraft until admitted or otherwise permitted to land by an officer of the Service. Notice or order to so detain shall not be required.

§ 235.4 *Admitted alien assisted.* Notwithstanding admission, and for reasons satisfactory to the district director or officer in charge, when facilities are available, any alien may remain a few days at an immigration station upon payment of the actual cost of such maintenance. If in such a case the delay in leaving the immigration station is due to accident or other unavoidable circumstances and the alien is without sufficient means to defray the expenses incident thereto, the district director or the officer in charge may in his discretion authorize such ex-

pense, but in such event he shall report the case promptly to the regional office with full reasons for his action and request that the authorization be ratified.

(Amended, 19 F. R. 9178, Dec. 24, 1954)

§ 235.5 *Preexamination in certain parts of the United States; who may apply.* When an office of the Service is located in Hawaii, Alaska, Guam, Puerto Rico, the Virgin Islands of the United States, or any outlying possession of the United States, a person (whether an alien or one claiming United States nationality) who is residing, and is entitled under the immigration laws to reside permanently, in any of the places enumerated in this section, and who intends to apply for temporary or permanent admission to any other part of the United States or outlying possession of the United States, may appear before the district director or the officer in charge having administrative jurisdiction over such office for examination as to his admissibility to the United States.

§ 235.6 *Preinspection in certain parts of the United States.* In the case of any aircraft proceeding from Hawaii, Alaska, Guam, Puerto Rico, or the Virgin Islands of the United States destined directly and without touching at a foreign port or place to any other of such places or to the continental United States, the examination required by the Immigration and Nationality Act of the passengers and crew may be made prior to the departure of the aircraft, and in such event, final determination of admissibility shall be made immediately prior to such departure. The examination shall be conducted in accordance with sections 234, 235, 236, and 237 of the Immigration and Nationality Act and this part and Parts 236 and

237 of this chapter, except that if it appears to the examining immigration officer that any person in the United States being examined under this section is prima facie deportable from the United States, further action with respect to his examination shall be deferred and an application for a warrant of arrest shall be made and further proceedings conducted as provided in section 242 of the Immigration and Nationality Act and Part 242 of this chapter. When the inspection procedure described above is applied to any aircraft, persons examined and found admissible shall be placed aboard the aircraft, or kept at the airport separate and apart from the general public until they are permitted to board the aircraft. No other person shall be permitted to depart on such aircraft until and unless he is found to be admissible as provided in this section.

(Amended, 18 F. R. 6316, Oct. 2, 1953)

SUBPART B—PROCEDURAL AND OTHER NONSUBSTANTIVE PROVISIONS

§ 235.11 *Notice of referral to Special Inquiry Officer.* If, in accordance with the provisions of section 235 (b) of the Immigration and Nationality Act, the examining immigration officer retains an alien for further inquiry before a special inquiry officer, he shall immediately sign and deliver to the alien a Notice To Alien Detained For Hearing By Special Inquiry Officer (Form I-122). If the alien is unable to read or understand the notice, it shall be read and explained to him by an employee of the Service, through an interpreter, if necessary, prior to such further inquiry.

§ 235.12 *Referral of certain cases to district director or*

officer in charge. The immigration officer conducting the preliminary examination of an alien who is applying for admission to the United States for permanent residence and who is liable to be excluded because he is likely to become a public charge or because of a physical disability other than tuberculosis, leprosy, or a dangerous contagious disease, shall refer the question of the alien's admission to the district director or officer in charge having administrative jurisdiction over the place where the examination is being conducted. The district director or officer in charge may, in his discretion, admit the alien on primary inspection, if the alien is otherwise admissible in accordance with Part 213 of this chapter. If the district director or officer in charge does not so admit the alien, the question of his admission shall be referred to a special inquiry officer, and the special inquiry officer may, in his discretion, admit the alien, if he is otherwise admissible in accordance with the provisions of Part 213 of this chapter. The immigration officer conducting the preliminary examination at a port of entry of an alien applying for temporary admission to the United States who is liable to be excluded on grounds other than those set forth in paragraph (9), (10), (23) or (28) of section 212 (a) of the Immigration and Nationality Act and who appears to be eligible to apply for the exercise of discretion under the provisions of section 212 (d) (3) of that act and § 212.8 of this chapter, shall, if the alien applies for the exercise of such discretion, defer further examination and refer the application to the district director having jurisdiction over the place where the examination is being conducted. The immigration officer conducting the preliminary examination at a port of entry of an alien applying for permanent admission to the United States who is liable to be

excluded on grounds other than those set forth in paragraph (27), (28), or (29) of section 212 (a) of the act and who appears to be eligible to apply for the exercise of discretion under the provisions of section 212 (c) of that act and § 212.73 of this chapter, shall, if the alien applies for the exercise of such discretion, defer further examination and refer the application to the district director having jurisdiction over the place where the examination is being conducted.

(Revised, 18 F. R. 3580, June 19, 1953; subsequently, the last sentence set forth above was added, 19 F. R. 9478, Dec. 24, 1954.)

§ 235.13. *Reading test.* Aliens who are subject to the provisions of section 212 (a) (25) of the Immigration and Nationality Act shall demonstrate their ability to read and understand matter printed in plainly legible type and in a language or dialect designated by the alien at the time of examination. In applying the reading test immigration officers shall use the printed and numbered test slips supplied by the Service for that purpose, and a record shall be made upon the manifest or hearing record of the special inquiry officer showing both the class and serial number of the slip used in each case and the language or dialect designated by the applicant and actually used in the examination. No two aliens listed upon the same manifest sheet shall be examined at seaports by the use of the same slip. If the examining immigration officer is unable to speak and understand the language or dialect in which the alien is examined, the services of an interpreter shall be used for interpreting into spoken English the printed matter read by the alien. Whenever because of lack of the qualified interpreters necessary for the ob-

servance of the general method prescribed herein, or for any other reason, it is impracticable to adopt said general method, immigration officers may employ such other means as will clearly demonstrate the alien's ability, or lack of ability, to read and understand what he has read.

§ 235.14 *Notation in passports.* Whenever an alien admitted temporarily to the United States is issued a Form 257a or Form I-94C, the admitting officer shall, by means of a stamp, record on the passport presented by the alien the word "Admitted" and the date and place of admission. There shall be inscribed in the passport as a part of such notation the visa application number (including any letters that are part thereof) appearing on the form 257a, if such number does not appear in the passport visa, or the serial number (including any letters that are part thereof) of the Form I-94C. Whenever an alien is admitted permanently to the United States, the admitting immigration officer shall, by means of a stamp, record on any passport presented by the alien the word "Admitted," the date and place of admission, and the section of law under which the alien is admitted.

§ 235.15 *Temporary exclusion*—(a) *Report.* Any immigration officer who temporarily excludes an alien under the provisions of section 235 (c) of the Immigration and Nationality Act shall report such action promptly to the district director having administrative jurisdiction over the port at which such alien arrived. If the subject of the report is an alien who seeks to enter the United States other than under section 101 (a) (15) (D) of the Immigration and Nationality Act, the report shall be forwarded by the district director to the Commissioner and

further action shall be taken thereon as provided in paragraph (c) of this section.

(b) *Action in cases of alien crewmen.* If the subject of the report is an alien crewman who seeks to land as a nonimmigrant pursuant to section 101 (a) (15) (D) of the Immigration and Nationality Act, the district director shall determine whether the crewman is inadmissible to the United States under paragraph (27), (28), or (29) of section 212 (a) of that act. If the district director is satisfied that the crewman is excludable under any of such paragraphs on the basis of information of a confidential nature, the disclosure of which the district director, in the exercise of his discretion, concludes would be prejudicial to the public interest, safety, or security, he shall direct the examining immigration officer not to grant such crewman a conditional permit to land, and the reasons for taking such action shall not be disclosed to the crewman. Otherwise, the case shall be returned by the district director to an examining immigration officer to determine whether a conditional permit to land should be granted such crewman pursuant to section 252 of the Immigration and Nationality Act.

(c) *Action by Commissioner.* If the Commissioner is satisfied that the alien is inadmissible to the United States under paragraph (27), (28), or (29) of section 212 (a) of the Immigration and Nationality Act and if the Commissioner, in the exercise of his discretion, concludes that such inadmissibility is based on information of a confidential nature the disclosure of which would be prejudicial to the public interest, safety, or security, he may (1) deny any hearing or further hearing by a special inquiry officer and order such alien excluded and deported; or (2) enter

whether order in the case as he deems appropriate. In any other case the Commissioner shall direct that the alien be given a hearing or further hearing before a special inquiry officer.

(d) *Finality of decision.* The decision of the district director or the Commissioner provided for in paragraphs (b) and (c) of this section respectively shall be final and no appeal may be taken therefrom. The decision of the Commissioner shall be in writing, signed by him and, unless it contains confidential matter, a copy shall be served on the alien. If the decision contains confidential matter, a separate order showing only the ultimate disposition of the case shall be signed by the Commissioner and served on the alien.

(e) *Hearing by special inquiry officer.* In any case in which the Commissioner directs that an alien temporarily excluded be given a hearing or further hearing before a special inquiry officer, such hearing and all further proceedings in the case shall be conducted in accordance with the provisions of section 236 and other applicable sections of the Immigration and Nationality Act to the same extent as though the alien had been referred to a special inquiry officer by the examining immigration officer; except, that if confidential information, not previously considered in the case, is adduced supporting the exclusion of the alien under paragraph (27), (28), or (29) of section 212 (a) of the Immigration and Nationality Act, the disclosure of which, in the discretion of the special inquiry officer, may be prejudicial to the public interest, safety, or security, the special inquiry officer may again temporarily exclude the alien under the authority of section 235 (c) of the Immigration and Nationality Act and further action shall be taken as provided in this section.

235.51 *Preexamination procedure*—(a) *Action by district director or officer in charge*—(1) *Applicant eligible for permanent residence.* The district director or officer in charge shall cause such investigation of the applicant to be conducted as he deems necessary. If such officer is satisfied (i) that the person is eligible to apply under § 235.5; (ii) that any claim to United States nationality has been established; and (iii) that the person is clearly and beyond a doubt admissible for permanent residence without a visa and passport to the place to which destined, he shall cause to be prepared and issued to such person a Form I-94F and shall note on the reverse side thereof the place and date of the preexamination and the words "Issued under 8 CFR 235.5" followed by the signature of the issuing officer in the space provided. The names and ages of children under 14 may be included in the Form I-94F prepared for an accompanying parent or guardian.

(2) *Applicant eligible for temporary admission only.* The district director or officer in charge shall cause such investigation of the applicant to be conducted as he deems necessary. If the applicant is within the purview of the proviso to section 212 (d)(7) of the Immigration and Nationality Act and is eligible under said Act for temporary admission only, without a visa and passport, the district director or officer in charge shall cause to be prepared and issued to the applicant a complete set of Forms I-94 if he is satisfied that the applicant is clearly and beyond a doubt admissible to the place to which destined. The Forms I-94 shall be noted as provided above for the Form I-94F. The names and ages of children under 14 may be included in the Forms I-94 prepared for an accompanying parent or guardian.

(b) *Action at port of arrival.* If the person to whom a Form I-94 has been issued in accordance with paragraph (a) of this section applies for admission within 30 days of the notation of the preexamining officer and there has been no subsequent change in the person's immigration status, he may be admitted upon identification. Upon admission, the form or forms presented shall be surrendered as provided in § 221.3 of this chapter. If, notwithstanding the determination made on preexamination, the examining immigration officer at the port of entry is not satisfied of the person's admissibility, further action shall be taken as provided in sections 235, 236, and 237 of the Immigration and Nationality Act, this part, and Parts 236 and 237 of this chapter, unless it appears to such examining immigration officer that such person would be *prima-facie* deportable under the Immigration and Nationality Act from that part of the United States or possession of the United States from which he came, in which event an application for a warrant of arrest shall be made, and further proceedings conducted, as provided in Part 242 of this chapter. In such case further action on the application for admission shall be deferred pending disposition of the proceedings under Part 242 of this chapter.

(c) *Aliens not eligible.* If the district director or officer in charge is not satisfied that the alien is eligible for temporary or permanent admission under this section he shall not issue a Form I-94. No appeal shall lie from the decision of the district director or officer in charge refusing issuance of a Form I-94 under this part but such refusal shall be without prejudice to a subsequent application for admission at the place of intended destination.

APPENDIX B.—(1)

Title II—Immigration, Chapter 9—Miscellaneous

POWERS OF IMMIGRATION OFFICERS AND EMPLOYEES

"Sec. 287. (a) Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant—

(1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States;

(2) to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, or expulsion of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States;

(3) within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle, and within a distance of twenty-five miles from any such external boundary to have access to private lands, but not dwellings,

for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States; and

(4) to make arrests for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, or expulsion of aliens, if he has reason to believe that the person so arrested is guilty of such felony and if there is likelihood of the person escaping before a warrant can be obtained for his arrest, but the person arrested shall be taken without necessary delay before the nearest available officer empowered to commit persons charged with offenses against the laws of the United States. Any such employee shall also have the power to execute any warrant or other process issued by any officer under any law regulating the admission, exclusion, or expulsion of aliens.

(b) Any officer or employee of the Service designated by the Attorney General, whether individually or as one of a class, shall have power and authority to administer oaths and to take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States, or concerning any matter which is material or relevant to the enforcement of this Act and the administration of the Service; and any person to whom such oath has been administered, under the provisions of this Act, who shall knowingly or willfully give false evidence or swear to any false statement concerning any matter referred to in this subsection shall be guilty of perjury and shall be punished as provided by section 1621, title 18, United States Code.

"(c) Any officer or employee of the Service authorized and designated under regulations prescribed by the Attorney General, whether individually or as one of a class, shall have power to conduct a search, without warrant, of the person, and of the personal effects in the possession of any person seeking admission to the United States, concerning whom such officer or employee may have reasonable cause to suspect that grounds exist for exclusion from the United States under this Act which would be disclosed by such search."

APPENDIX B.—(2)

8 CFR Part 287—Field Officers; Powers and Duties

Source: §§ 287.1 to 287.4 appear at 17 F. R. 11536, Dec. 19, 1952.

SUBPART A—SUBSTANTIVE PROVISIONS

§ 287.1 *Definitions*—(a) *Reasonable distance from external boundary.* The phrase "within a reasonable distance from any external boundary of the United States", as used in section 287 of the Immigration and Nationality Act, means within a distance of not exceeding 100 air miles from any external boundary of the United States or any shorter distance which may be fixed by the district director, or, so far as the power to board and search aircraft is concerned, any distance fixed pursuant to paragraph (b) of this section.

(b) *Reasonable distance; fixing by district directors.* In fixing distances not exceeding 100 air miles pursuant to paragraph (a) of this section, district directors shall

take into consideration topography, confluence of arteries of transportation leading from external boundaries, density of population, possible inconvenience to the traveling public, types of conveyances used, and reliable information as to movements of persons effecting illegal entry into the United States: *Provided*, That whenever in the opinion of a district director a distance in his district of more than 100 air miles from any external boundary of the United States would because of unusual circumstances be reasonable, such district director shall forward a complete report with respect to the matter to the Commissioner, who may, if he determines that such action is justified, declare such distance to be reasonable.

(c) *Certain powers of immigration officers.* Any immigration officer is hereby authorized to exercise anywhere in the United States all the powers conferred by section 287 of the Immigration and Nationality Act, including:

(1) The power to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States;

(2) The power to execute warrants and other processes, to arrest without warrant, to board and search vessels and other conveyances without warrant, and to enter private lands within a distance of twenty-five miles of any external boundary of the United States without warrant to prevent the illegal entry of aliens into the United States;

(3) The power to administer oaths and to take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the

United States, or concerning any matter which is material or relevant to the enforcement of the Immigration and Nationality Act and the administration of the Service; and

(4) The power to conduct a search, without warrant, of the person, and of the personal effects in the possession of, any person seeking admission to the United States.

(d) *Disposition of felony cases.* The cases of persons arrested for felonies under paragraph (4) of section 287 (a) of the Immigration and Nationality Act shall be handled administratively in accordance with the applicable provisions of § 287.2, but in no case shall there be prejudiced the right of the person arrested to be taken without unnecessary delay before another near-by officer empowered to commit persons charged with offenses against the laws of the United States.

(e) *Power to arrest persons who bring in, transport, or harbor certain aliens, or induce them to enter.* Any immigration officer shall have authority to make arrests for violations of any provision of section 274 of the Immigration and Nationality Act.

(f) *Patrolling the border.* The phrase "patrolling the border to prevent the illegal entry of aliens into the United States" as used in section 287 of the Immigration and Nationality Act means conducting such activities as are customary, or reasonable and necessary, to prevent the illegal entry of aliens into the United States.

(Revised, 18 F. R. 3532, June 19, 1953)

§ 287.2 *Criminal violations; investigation and action.*

Whenever a district director or an officer in charge has reason to believe that there has been a violation punishable under any criminal provision of the laws administered or enforced by the Service, he shall cause an investigation to be made immediately of all the pertinent facts and circumstances and shall take or cause to be taken such further action as the results of such investigation warrant.

§ 287.3 *Disposition of cases of aliens arrested without warrant.* An alien arrested without a warrant of arrest under the authority contained in section 287 (a) (2) of the Immigration and Nationality Act shall be examined as therein provided by an officer other than the arresting officer, unless no other qualified officer is readily available and the taking of the alien before another officer would entail unnecessary delay, in which event the arresting officer, if the conduct of such examination is a part of the duties assigned to him, may examine the alien. If such examining officer is satisfied that there is prima facie evidence establishing that the arrested alien was entering or attempting to enter the United States in violation of the immigration laws, he shall refer the case to a special inquiry officer for further inquiry in accordance with Parts 235 and 236 of this chapter or take whatever other action may be appropriate or required under the laws or other regulations applicable to the particular case. If the examining officer is satisfied that there is prima facie evidence establishing that the arrested alien is in the United States in violation of the immigration laws, further action in the case shall be taken as provided in Part 242 of this chapter.

§ 287.4 *Subpena.* (a) *Who may issue.* Except as pro-

vided in § 335.11 of this chapter, subpenas requiring the attendance of witnesses or the production of documentary evidence, or both, may be issued upon his own volition by a district director, officer in charge, or special inquiry officer in any proceeding pending before him, or upon application of an officer of the Service, or upon written application of the alien or other party affected. If an alien or other party affected by a proceeding before the Service requests that a witness be subpenaed to testify or to produce books, papers, or documents in such proceeding before the Service, he shall be required as a condition precedent to the issuance of the subpena to state in writing what he expects to prove by such witness or the books, papers, or documents and to show affirmatively that the proposed evidence is relevant and material and that he has made diligent efforts without success to produce the same. Upon determining that a witness whose evidence is desired either by the Service officer or the alien or other party affected will not appear and testify or produce documentary evidence unless commanded to do so and that the testimony and evidence of such witness is essential, the district director, officer in charge, or a special inquiry officer in any proceeding pending before him, shall issue a subpena. If the witness is at a distance of more than 100 miles from the place of hearing, the subpena shall provide for the witness' appearance at the field office nearest to him to respond to oral or written interrogatories, unless the Service indicates that there is no objection to bringing the witness the distance required to enable him to testify in person at the hearing.

(b) *Form.* Every subpena issued under the provisions of this section shall state the title of the proceeding

and shall command the person to whom it is directed to attend and give testimony at a time and place therein specified. A subpena may also command the person to whom it is directed to produce the books, papers or documents designated therein. A subpena may also direct the making of a deposition before an officer of the Service. Subpenas shall be issued on Form I-138.

(c) *Service.* A subpena issued under this section may be served by any person over 18 years of age not a party to the case designated to make such service by the district director or officer in charge having administrative jurisdiction over the office in which the subpena is issued. Service of the subpena shall be made by delivering a copy thereof to the person named therein and by tendering to him the fee for one day's attendance and the mileage allowed by law by the United States District Court for the district in which the testimony is to be taken. When the subpena is issued on behalf of the Service, fee and mileage need not be tendered at the time of service. A record of such service shall be made and attached to the original copy of the subpena.

(d) *Involving aid of court.* If a witness neglects or refuses to appear and testify as directed by the subpena served upon him in accordance with the provisions of this section, the district director issuing the subpena shall request the United States Attorney for the proper district to report such neglect or refusal to the appropriate United States District Court and to request such court to issue an order requiring the witness to appear and testify and to produce the books, papers or documents designated in the subpenas. If the subpena was issued by an officer in charge or a special inquiry officer, the officer is-

suing the subpena shall request the district director having administrative jurisdiction over such officer to take the action referred to in the previous sentence in the event the witness neglects or refuses to appear and testify as directed by the subpena served upon him.

§ 287.5 *Power and authority to administer oaths.* Any immigration officer, or any other employee individually designated by a district director, shall have the power and authority to administer oaths.

(Added, 18 F. R. 6316, Oct. 2, 1953)

SUBPART B—PROCEDURAL AND OTHER NONSUBSTANTIVE PROVISIONS (RESERVED)

APPENDIX C.—(1)

Title III—Nationality and Naturalization, Chapter 2—Nationality through Naturalization

INVESTIGATION OF PETITIONERS; PRELIMINARY EXAMINATIONS ON PETITIONS

"Sec. 335 (a). At any time prior to the holding of the final hearing on a petition for naturalization provided for by section 336 (a), an employee of the Service, or of the United States designated by the Attorney General, shall conduct a personal investigation of the person petitioning for naturalization in the vicinity or vicinities in which such person has maintained his actual place of abode and in the vicinity or vicinities in which such person has been em-

ployed or has engaged in business or work for at least five years immediately preceding the filing of his petition for naturalization. The Attorney General may, in his discretion, waive a personal investigation in an individual case or in such cases or classes of cases as may be designated by him.

"(b) The Attorney General shall designate employees of the Service to conduct preliminary examinations upon petitions for naturalization to any naturalization court and to make recommendations thereon to such court. For such purposes any such employee so designated is hereby authorized to take testimony concerning any matter touching or in any way affecting the admissibility of any petitioner for naturalization, to administer oaths, including the oath of the petitioner for naturalization and the oaths of petitioner's witnesses to the petition for naturalization, and to require by subpena the attendance and testimony of witnesses, including petitioner, before such employee so designated and the production of relevant books, papers, and documents, and to that end may invoke the aid of any court exercising naturalization jurisdiction as specified in section 310 of this title; and any such court may, in the event of neglect or refusal to respond to a subpena issued by any such employee so designated or refusal to testify before such employee so designated issue an order requiring such person to appear before such employee so designated, produce relevant books, papers, and documents if demanded, and testify; and any failure to obey such order of the court may be punished by the court as a contempt thereof. The record of the preliminary examination authorized by this subsection shall be admissible as evidence in any final hearing con-

ducted by a naturalization court designated in section 310 of this title.

(c) The record of the preliminary examination upon any petition for naturalization may, in the discretion of the Attorney General, be transmitted to the Attorney General and the recommendation with respect thereto of the employee designated to conduct such preliminary examination shall when made also be transmitted to the Attorney General.

(d) The recommendation of the employee designated to conduct any such preliminary examination shall be submitted to the court at the hearing upon the petition and shall include a recommendation that the petition be granted, or denied, or continued, with reasons therefor. In any case in which the recommendation of the Attorney General does not agree with that of the employee designated to conduct such preliminary examination, the recommendations of both such employee and the Attorney General shall be submitted to the court at the hearing upon the petition, and the officer of the Service in attendance at such hearing shall, at the request of the court, present both the views of such employee and those of the Attorney General with respect to such petition to the court. The recommendations of such employee and of the Attorney General shall be accompanied by duplicate lists containing the names of the petitioners classified according to the character of the recommendations, and signed by such employee or the Attorney General, as the case may be. The judge to whom such recommendations are submitted shall, if he approve such recommendations, enter a written order with such exceptions as the judge may deem proper, by subscribing his name to each such list

when corrected to conform to his conclusions upon such recommendations. One of each such lists shall thereafter be filed permanently of record in such court and the duplicate of each such list shall be sent by the clerk of such court to the Attorney General.

"(e) After the petition for naturalization has been filed in the office of the clerk of court, the petitioner shall not be permitted to withdraw his petition, except with the consent of the Attorney General. In cases where the Attorney General does not consent to withdrawal of the petition, the court shall determine the petition on its merits and enter a final order accordingly. In cases where the petitioner fails to prosecute his petition, the petition shall be decided upon its merits unless the Attorney General moves that the petition be dismissed for lack of prosecution.

"(f) As to each period and place of residence in the State in which the petitioner resides at the time of filing the petition, during the entire period of at least six months immediately preceding the date of filing the petition, there shall be included in the petition for naturalization the affidavits of at least two credible witnesses, citizens of the United States, stating that each has personally known the petitioner to have been a resident at such place for such period, and that the petitioner is and during all such periods has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

"(g) At the hearing on the petition, residence in the State in which the petitioner resides at the time of filing

the petition, for at least six months immediately preceding the date of filing the petition, and the other qualifications required by subsection (a) of section 316 during such residence shall be proved by the oral testimony of at least two credible witnesses, citizens of the United States, in addition to the affidavits required by subsection (f) of this section to be included in the petition. At the hearing, residence and physical presence within the United States during the five-year period required by section 316 (a), but outside the State, or within the State but prior to the six months immediately preceding the date of filing the petition, and the other qualifications required by subsection (a) of section 316 during such period at such places, shall be proved either by depositions taken in accordance with subsection (d) of section 332, or oral testimony, of at least two such witnesses for each place of residence.

"(h) Notwithstanding the provisions of subsections (f) and (g) of this section, the requirements of subsection (a) of section 316 as to the petitioner's residence, good moral character, attachment to the principles of the Constitution of the United States, and disposition toward the good order and happiness of the United States may be established by any evidence satisfactory to the naturalization court in those cases under subsection (b) of section 316 in which the alien has been absent from the United States because of his employment by, or contract with the Government of the United States or an American institution of research, recognized as such by the Attorney General, or employment by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States or a

subsidiary thereof, or employment by a public international organization in which the United States participates.

"(i) (1) A petitioner for naturalization who removes from the jurisdiction of the court in which his petition for naturalization is pending may, at any time thereafter, make application to the court for transfer of the petition to a naturalization court exercising jurisdiction over the petitioner's place of residence, or to any other naturalization court if the petition was not required to be filed in a naturalization court exercising jurisdiction over the petitioner's place of residence: *Provided*, That such transfer shall not be made without the consent of the Attorney General, and of the court to which the petition is transferred.

"(2) Where transfer of the petition is authorized the clerk of court in which the petition was filed shall forward a certified copy of the petition and the original record in the case to the clerk of court to which the petition is transferred, and proceedings on the petition shall thereafter continue as though the petition had originally been filed in the court to which transferred, except that the court to which the petition is transferred may in its discretion require the production of two credible United States citizen witnesses to testify as to the petitioner's qualifications for naturalization since the date of such transfer.".

APPENDIX C.—(2)

8 CFR Part 335—Preliminary Examination on Petitions For Naturalization

Source: §§ 335.11 to 335.13 appear at 17 F. R. 11550, Dec. 19, 1952.

SUBPART A—SUBSTANTIVE PROVISIONS (RESERVED)

SUBPART B—PROCEDURAL AND OTHER NONSUBSTANTIVE PROVISIONS

§ 335.11 *Preliminary examination pursuant to section 335 (b) of the Immigration and Nationality Act*—(a) *When held.* Preliminary examinations shall be open to the public, and shall, where practicable, be held immediately after the petition for naturalization is filed with the clerk of the court unless, in the opinion of the district director or officer in charge, the interests of good administration would be better served by holding such examinations prior to the filing of the petition in the office of the clerk of court, but in no event shall such examinations be held before the petition has been properly executed by the petitioner and his verifying witnesses.

(b) *Conduct of examination.* Preliminary examinations shall be held before an employee of the Service, designated by the district director to conduct such proceedings and to make findings and recommendations thereon to the naturalization court, who shall be known as the "designated examiner." The petitioner and his witnesses and the witnesses produced on behalf of the Government shall be present. The designated examiner shall, prior to the commencement of the examination, make

shown to the petitioner his official capacity and that of any other officer of the Service who may participate in the proceeding. The designated examiner shall have before him the entire record of the preliminary interrogation, including the petitioner's application to file a petition for naturalization (Form N-400) and any other evidence or data that may be relevant or material to the inquiry. All testimony taken at the examination shall be under oath or affirmation administered by the designated examiner. The designated examiner may interrogate the petitioner and witnesses produced in behalf of the petitioner or the Government, and present evidence touching upon the petitioner's admissibility to citizenship. He shall regulate the course of the examination, rule upon applications for the issuance of subpenas and issue such subpenas in proper cases, grant or deny continuances, and rule on all objections to the introduction of evidence, which rulings shall be entered on the record. Evidence held by the designated examiner to be inadmissible shall nevertheless be received into the record subject to the ruling of the court. The petitioner and the Government shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. If the petitioner is not represented by an attorney or representative, the designated examiner shall assist the petitioner in the introduction of all evidence available in his behalf. All documentary or written evidence shall be properly identified and introduced into the record as exhibits by number, unless read into the record.

(c) *Assignment of examining officer at preliminary examination.* The district director or officer in charge

may in his discretion assign an employee of the Service to act as examining officer at the preliminary examination. Such employee shall examine and cross-examine witnesses produced in behalf of the Governmet or the petitioner and present evidence pertinent to the petitioner's admissibility to citizenship. The designated examiner may take such part in the interrogation of the petitioner and witnesses and the introduction of evidence as he may deem necessary.

(d) *Stenographic reporting of proceedings; mechanical recording equipment.* A stenographer shall be in attendance whenever, in the opinion of the designated examiner, such attendance is desirable, and in every case to which an examining officer is assigned. The stenographer shall record verbatim the entire proceedings, including the oaths administered and rulings on objections, but shall not record arguments in support of objections, or statements made off the record with the consent of the petitioner. The stenographer shall certify that the transcribed minutes constitute a complete and accurate record of the examination. Whenever, in the opinion of the designated examiner the use of mechanical recording equipment in lieu of a stenographer is deemed desirable, the proceedings may be recorded by such equipment.

(e) *Issuance of subpenas; attendance and mileage fees.* Subpenas requiring the attendance of witnesses or the production of documentary evidence, or both, may be issued by the designated examiner, upon his own volition or upon written application of the petitioner or his attorney or representative, the examining officer, or the Service. Such written application shall specify, as nearly as may be, the relevance, materiality, and scope of the testimony

or documentary evidence sought and show affirmatively that the testimony or documentary evidence cannot otherwise be produced. Subpenas shall be issued on Form I-133 and due record shall be made of their service. The subpena may be served by any person over 18 years of age, not a party to the case, designated to make such service by the district director or officer in charge. Mileage and fees for witnesses subpenaed under this section shall be paid by the party at whose instance the subpena is issued at rates allowed and under conditions prescribed by the naturalization court in which the petition is pending. Before issuing a subpena the designated examiner may require a deposit of an amount adequate to cover the fees and mileage involved. If the witness subpenaed neglects or refuses to testify or produce documentary evidence as directed by the subpena, the district director or the officer in charge shall request the United States Attorney for the proper district to report such neglect or refusal to any court exercising naturalization jurisdiction and to file a motion in such court for an order directing the witness to appear and testify and to produce the documentary evidence described in the subpena.

(f) *Briefs.* At the conclusion of the preliminary examination the petitioner or his attorney or representative, and the examining officer if one was assigned, may submit briefs in support of arguments made or issues raised at the examination.

(g) *Representation by attorney or representative; absence of representative; advice to petitioner.* The petitioner may be represented by an attorney or a representative who has, where required, been admitted to practice before the Service in accordance with Part 292

of this chapter. If at any stage of the preliminary examination it appears to the designated examiner that he may recommend denial of the petition, or granting thereof with the facts to be presented to the court, he shall advise the petitioner of his right to be represented by an attorney or representative. A continuance of the examination shall be granted upon the petitioner's motion for the purpose of obtaining an attorney or representative. The petitioner's attorney or a representative shall be permitted to be present at all times during the preliminary examination or at any subsequent examinations and the petitioner shall not in any such examination or subsequent examinations be interrogated in the absence of his attorney or representative, unless the petitioner waives such appearance. The attorney or a representative shall be permitted to offer evidence to meet any evidence presented or adduced by the Government or the designated examiner. A petitioner who is not represented by an attorney or a representative shall be entitled to all the benefits and the privileges provided for in this section.

(h) *Designation of Service employees to conduct preliminary examinations.* All employees of the Service who have been designated to conduct preliminary examinations upon petitions for naturalization to any naturalization court and to make findings and recommendations thereon to such courts under the provisions of section 333 of the Nationality Act of 1940, as amended, and whose designations are still in force on December 24, 1952, are hereby designated under the provisions of section 335 of the Immigration and Nationality Act to conduct preliminary examinations upon petitions for naturalization to any naturalization court and to make findings and recom-

mendations thereon to such courts. Designations under this paragraph and under paragraph (b) of this section shall remain in force until revoked.

§ 335.12 *Recommendations of the designated examiner and the Assistant Commissioner, Examinations Division; notice.* The designated examiner shall, as soon as practicable after conclusion of the preliminary examination, prepare an appropriate recommendation thereon for the court. If the designated examiner is of the opinion (a) that the petition should be denied, or (b) that the petition should be granted but the facts should be presented to the court, he shall prepare a memorandum containing a summary of the evidence adduced at the examination, findings of fact and conclusions of law, and his recommendation as to the final disposition of the petition by the court, and shall before final hearing, in those cases designated by the Assistant Commissioner, Examinations Division, submit the memorandum to him for his views and recommendation. No evidence dehors the record or evidence that would not be admissible in judicial proceedings under recognized rules of evidence shall be considered in the preparation of the memorandum. The Assistant Commissioner shall return the designated examiner's memorandum, the record, and any memorandum prepared by the Assistant Commissioner containing his own views and recommendation for presentation to the court.

(Revised, 19 F. R. 9183, Dec. 24, 1954.)

§ 335.13 *Notice of recommendation of designated examiner.*—(a) *Recommendation that petition be denied.* When the designated examiner proposes to recommend denial of the petition, the petitioner or his attorney or

representative shall be notified thereof, on Form N-425, and furnished a copy of the designated examiner's memorandum. The notice shall be sent by registered mail, with return receipt requested, after any review made by the Assistant Commissioner, Examinations Division, and at least thirty days prior to final hearing. The petitioner shall inform the Service in writing within thirty days from the date of the notice whether he desires a hearing before the court.

(b) *Recommendation that petition be granted.* When the designated examiner proposes to recommend granting of the petition and to present the facts and issues to the court, the petitioner or his attorney or representative shall be notified of the recommendation and furnished a copy of the designated examiner's memorandum prior to the date of the hearing, and after any review made by the Assistant Commissioner.

(c) *Disagreement between recommendations of designated examiner and the Assistant Commissioner, Examinations Division.* In those cases reviewed by the Assistant Commissioner in which his views and recommendation do not agree with those of the designated examiner, the notice required by paragraphs (a) and (b) of this section shall also advise the petitioner of the recommendation of the Assistant Commissioner and that both recommendations will be presented to the court. There shall also be enclosed with such notice a copy of the Assistant Commissioner's memorandum.

(Revised, 19 F. R. 9183, Dec. 24, 1954)

APPENDIX D.—(1)

Title III—Nationality and Naturalization, Chapter 2—Nationality through Naturalization

REVOCATION OF NATURALIZATION

"Sec. 340. (a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively: *Provided*, That refusal on the part of a naturalized citizen within a period of ten years following his naturalization to testify as a witness in any proceeding before a congressional committee concerning his subversive activities, in a case where such person has been convicted for contempt for such refusal, shall be held to constitute a ground for revocation of such person's naturalization under this subsection as having been procured by concealment of a material fact or by willful misrepresentation. If the naturalized citizen does not reside in any judicial district in the United States at the time of bringing such suit, the proceedings may be instituted in the United States Dis-

trict Court for the District of Columbia or in the United States district court in the judicial district in which such person last had his residence.

"(b) The party to whom was granted the naturalization alleged to have been procured by concealment of a material fact or by willful misrepresentation shall, in any such proceedings under subsection (a) of this section, have sixty days' personal notice, unless waived by such party, in which to make answer to the petition of the United States; and if such naturalized person be absent from the United States or from the judicial district in which such person last had his residence, such notice shall be given either by personal service upon him or by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought.

"(c) If a person who shall have been naturalized after the effective date of this Act shall within five years next following such naturalization become a member of or affiliated with any organization, membership in or affiliation with which at the time of naturalization would have precluded such person from naturalization under the provisions of section 313, it shall be considered prima facie evidence that such person was not attached to the principles of the Constitution of the United States and was not well disposed to the good order and happiness of the United States at the time of naturalization, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the revocation and setting aside of the order admitting such person to citizenship and the cancellation of the certificate of naturalization as having been obtained by concealment of a material fact

or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively.

"(d) If a person who shall have been naturalized shall, within five years after such naturalization, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such person to reside permanently in the United States at the time of filing his petition for naturalization, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the revocation and setting aside of the order admitting such person to citizenship and the cancellation of the certificate of naturalization as having been obtained by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively. The diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with statements of the names of those persons within their respective jurisdictions who have been so naturalized and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to revoke and set aside the order admitting to citizenship and to cancel the certificate of naturalization.

"(e) The revocation and setting aside of the order admitting any person to citizenship and canceling his certificate of naturalization under the provisions of subsection (a) of section 338 of the Nationality Act of 1940 shall not, where such action takes place after the effective date of this Act, result in the loss of citizenship or any right or privilege of citizenship which would have been derived by or been available to a wife or minor child of the naturalized person had such naturalization not been revoked: *Provided*, That this subsection shall not apply in any case in which the revocation and setting aside of the order was the result of actual fraud.

"(f) Any person who claims United States citizenship through the naturalization of a parent or spouse in whose case there is a revocation and setting aside of the order admitting such parent or spouse to citizenship under the provisions of subsection (a) of this section on the ground that the order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation shall be deemed to have lost and to lose his citizenship and any right or privilege of citizenship which he may have, now has, or may hereafter acquire under and by virtue of such naturalization of such parent or spouse, regardless of whether such person is residing within or without the United States at the time of the revocation and setting aside of the order admitting such parent or spouse to citizenship. Any person who claims United States citizenship through the naturalization of a parent or spouse in whose case there is a revocation and setting aside of the order admitting such parent or spouse to citizenship and the cancellation of the certificate of naturalization under the provisions of subsections (e) or

(d) of this section or under the provisions of section 329 (c) of this title on any ground other than that the order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, shall be deemed to have lost and to lose his citizenship and any right or privilege of citizenship which would have been enjoyed by such person had there not been a revocation and setting aside of the order admitting such parent or spouse to citizenship and the cancellation of the certificate of naturalization, unless such person is residing in the United States at the time of the revocation and setting aside of the order admitting such parent or spouse to citizenship and the cancellation of the certificate of naturalization.

"(g) When a person shall be convicted under section 1425 of title 18, of the United States Code of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

"(h) Whenever an order admitting an alien to citizenship shall be revoked and set aside or a certificate of naturalization shall be canceled, or both, as provided in this section, the court in which such judgment or decree is rendered shall make an order canceling such certificate and shall send a certified copy of such order to the Attorney General. In case such certificate was not originally issued by the court making such order, it shall direct the clerk of court in which the order is revoked and set aside to transmit a copy of such order and judgment to the

court out of which such certificate of naturalization shall have been originally issued. It shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of naturalization, if there be any, upon the records and to notify the Attorney General of the entry of such order and of such cancellation. A person holding a certificate of naturalization or citizenship which has been canceled as provided by this section shall upon notice by the court by which the decree of cancellation was made, or by the Attorney General, surrender the same to the Attorney General.

"(i) The provisions of this section shall apply not only to any naturalization granted and certificates of naturalization and citizenship issued under the provisions of this title, but to any naturalization heretofore granted by any court, and to all certificates of naturalization and citizenship which may have been issued heretofore by any court or by the Commissioner based upon naturalization granted by any court, or by a designated representative of the Commissioner under the provisions of section 702 of the Nationality Act of 1940, as amended, or by such designated representative under any other act.

"(j) Nothing contained in this section shall be regarded as limiting, denying, or restricting the power of any naturalization court, by or in which a person has been naturalized, to correct, reopen, alter, modify, or vacate its judgment or decree naturalizing such person, during the term of such court or within the time prescribed by the rules of procedure or statutes governing the jurisdiction of the court to take such action."

APPENDIX D.—(2)

8 CFR Part 340—Revocation of Naturalization

SUBPART A—SUBSTANTIVE PROVISIONS

(RESERVED)

SUBPART B—PROCEDURAL AND OTHER NONSUBSTANTIVE PROVISIONS

§ 340.11 *Investigation and report.* Whenever it appears that any grant of naturalization may have been procured by concealment of a material fact or by wilful misrepresentation, the facts shall be reported to the district director having jurisdiction over the naturalized person's last known place of residence. If the district director is satisfied that a prima facie showing has been made that grounds for revocation exist, he shall cause an investigation to be made and report the facts in writing to the Commissioner with a recommendation as to whether revocation proceedings should be instituted. If it appears that naturalization was procured in violation of section 1425 of Title 18 of the United States Code, the facts in regard thereto may be presented by the district director to the appropriate United States Attorney for possible criminal prosecution.

(Sec. 103, 66 Stat. 173. Interprets or applies secs. 332, 340, 68 Stat. 252, 260) (17 F. R. 11555, Dec. 19, 1952)

APPENDIX E.

U. S. CODE, CONGRESSIONAL AND ADMINISTRATIVE NEWS
Vol. 2, 82nd Congress, 2nd Session, 1952

(Pages 1683 to 1750)

(SYNOPSIS)

ANALYSIS OF THE BILL

TITLE I — GENERAL

1. Definitions (Sec. 101)

2. Diplomatic and Semidiplomatic Immunities (Sec. 102)

3. Powers and Duties of the Attorney General and the Secretary of State (Secs. 103, 104, 105)

"Under section 103, the Attorney General is charged with the primary responsibility for the administration and enforcement of the provisions of the bill except insofar as the bill and all other laws concerned with immigration and naturalization relate to the powers, functions, and duties conferred upon the Secretary of State, the officers of the Department of State, or diplomatic or consular officers. This is in accordance with the President's Reorganization Plan No. 2 of 1950. Provision is made for the delegation by the Attorney General of certain of his duties and powers to employees of the Department of Justice and the Immigration and Naturalization Service."

"Bureau of Security and Consular Affairs.—Section 104 creates a new organizational set-up within the Department

of State to administer the issuance of passports and visas. * * *"

"Section 105 is intended to strengthen security screening of aliens coming to the United States, or residing therein, by providing for a continuous flow of information between agencies of the Government charged with the administration of immigration and naturalization laws, and those agencies whose duty it is to gather intelligence information having a bearing on the security of the United States."

TITLE II — IMMIGRATION

1. Admissible Classes of Aliens
   - A. Immigration quotas (secs. 201, 202)
   - B. Allocation of quota numbers (sec. 203)
   - C. Nonquota immigrants (sec. 101 (a) (27))
   - D. Nonimmigrant classes (sec. 101 (a) (15))
2. Excludable Classes of Aliens (Sec. 212)
   - A. Physical and mental defects
   - B. Aliens with criminal records
   - C. Immoral persons
   - D. Stowaways
   - E. Illiterates
   - F. Subversives
   - G. Additional exclusion clauses
   - H. Safeguards for American labor
   - I. Discretionary authority
3. Entry Documents (Secs. 221, 222, 223)

"Sections 221, 222, and 223 provide for the issuance of entry documents. * * *"

4. Entry, Exclusion, and Deportation of Aliens. (Ch. 4 and Sec. 287) (Pages 1709-1710)

A. Inspection

"The provisions relating to the inspection of arriving aliens, contained in chapter 4 of the bill, follow the general pattern of the present law. Every alien arriving at a port of entry must be examined by an immigration officer before he may enter, and such officers are empowered to detain the aliens on board the arriving vessel or at the airport of arrival for observation if suspected of being afflicted with mental or physical defects and may order the temporary removal of the alien for examination and inspection. Medical examinations are to be made by at least one qualified medical officer of the United States Public Health Service or by a qualified civil surgeon.

"In conjunction with their inspection of aliens, the bill authorizes the immigration officers to board and search vessels, aircraft, railway cars or any other conveyance or vehicle in which they believe aliens are being brought into the United States. The immigration officers are empowered to administer oaths, take evidence and make a record, if necessary, concerning the enforcement of the bill with reference to the privilege of any alien to enter, pass through or reside in the United States. Any person coming to the United States may be required to state under oath the purpose or purposes for which he comes, the length of time he intends to remain, whether or not he intends to remain permanently, whether, if an alien, he intends to become a citizen, and such other information as will aid the immigration officers in determining whether the person is a national of the United States or an alien,

and, if the latter, whether he is subject to exclusion under any of the provisions of the bill. It is not intended by this provision to sanction the indiscriminate questioning or harassment of citizens returning to the United States, but it is to be used by the immigration officers whenever there is reason to believe that a citizen is violating or about to violate the law and is about to become expatriated. Immigration officers are also granted the power to subpena the attendance and testimony of witnesses, and the production of books, papers, and documents in aid of the enforcement of the provisions of the bill. An alien who does not appear, to the examining immigration officer, to be admissible, clearly and beyond a reasonable doubt, shall be detained for further inquiry by a special inquiry officer.

"It is specifically provided in section 235 (b) that an inquiry before a special inquiry officer is not required in the case of an alien crewman or a stowaway. Furthermore, in section 235 (c), it is provided that if in an examination before an immigration officer or a special inquiry officer an alien appears to be excludable under paragraph (27), (28), or (29) of section 212 (a) as an alien whose entry would endanger the public safety or security of the United States or as an alien who is a member of one of the subversive classes of excludables, no further inquiry by a special inquiry officer shall be conducted until the case is reported to the Attorney General together with any such written statement and accompanying information as the alien or his representative may desire to submit in connection therewith. In the latter type of case, the Attorney General may direct an inquiry or a further inquiry, as the case may be, or if he is satisfied that the alien is ex-

cludable on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the interests of the United States, he may, in his discretion, order such alien to be excluded and deported without any inquiry or further inquiry by a special inquiry officer.

"Section 287 of chapter 8 further specifies powers of immigration officers and employees of the Immigration and Naturalization Service. Amendments Nos. 20 and 21 are designed to make a very carefully considered distinction between powers which may be exercised without warrant and such where a warrant will be required."

B. Exclusion and deportation procedures

"The exemption of deportation proceedings from certain of the provisions of the Administrative Procedure Act contained in the Supplemental Appropriation Act, 1951 (Public Law 843, 81st Cong.), is specifically repealed by section 403 (a) (46) of the instant bill. Under sections 101 (b) (4), 236, and 242 (b) special procedures are established for the determination of whether or not an alien is subject to exclusion or deportation, which proceedings are to be conducted before special inquiry officers specially qualified to conduct such proceedings and designated by the Attorney General pursuant to the provisions of the bill. These procedures are made the sole and exclusive ones in such matters."

"A right of appeal to the Attorney General is not provided in the cases of aliens temporarily excluded under section 235 (c). The review procedure described under the heading, 'Inspection,' of this chapter, is in substitution therefor."

"The bill contains detailed and comprehensive provisions relating to the apprehension and deportation of aliens who are within the deportable classes. * * *"

"The provision controlling proceedings for the determination of deportability of an alien are contained in section 242 (b). Deportation proceedings are to be conducted by a special inquiry officer, * * *, who is authorized to administer oaths, to present and receive evidence, and to interrogate, examine, and cross-examine the alien or witnesses. * * *"

"* * * Special inquiry officers have no authority to punish aliens who fail to appear or remain at deportation hearings, through contempt proceedings or otherwise. Orderly administrative processes have at times been interrupted and subjected to unnecessary delays because aliens, without legitimate cause, refused to attend scheduled hearings or insisted upon leaving at their own pleasure and without other than contumacious reasons. The Government should have authority to proceed to a final decision in the face of such obstructionist tactics."

C. Detention and supervision of aliens ordered deported

D. Place to which alien is to be deported

5. Deportable Classes of Aliens (Sec. 241)
6. Adjustment of Status (Secs. 244, 245)
7. Assessment of Detention Expenses
8. Alien Crewmen Controls (Ch. 6)
9. Registration of Aliens (Ch. 7)
10. Penalties (Ch. 8)
11. Miscellaneous

TITLE III—NATIONALITY AND NATURALIZATION

1. Citizens by Birth and by Collective Naturalization
   - A. Citizens by birth
   - B. Citizenship in the territories and possessions
   - C. Children born out of wedlock

2. Nationality through Naturalization
   - A. Jurisdiction to naturalize
   - B. Eligibility to naturalization
   - C. Ineligibility to naturalization

3. Naturalization Procedures
   1. Optional declaration of intention—petition for naturalization
   2. Mandatory neighborhood investigations
   3. Preliminary and final hearings on petitions
   4. Oath of renunciation and allegiance
   5. Fiscal provisions

4. Judicial Revocation of Naturalization

"One of the major changes in existing nationality law provided by the bill is contained in section 340 which authorizes judicial revocation of naturalizaztion. Under the provisions of section 338 of the Nationality Act of 1940, revocation is possible where the naturalization was obtained by fraud or was procured illegally.

"The bill changes the basis for judicial revocation of naturalization from fraud and illegal procurement to procurement by concealment of a material fact or by willful misrepresentation."

5. Loss of Nationality — Other Than By Judicial Revocation

1. Loss of nationality by native-born and naturalized citizens
2. Loss of nationality by naturalized citizens only
   a. Exceptions to the 5-year and the 3-year rules
   b. Loss of nationality by minors
3. Divestiture of foreign nationality

6. Proceedings for Declaration of United States Nationality

TITLE IV — MISCELLANEOUS

(Secs. 401, 402, 403, 404, 405, 406, and 407)